

No. 23-55805

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

VIRGINIA DUNCAN, ET AL.,  
*Plaintiffs-Appellees,*

V.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,  
*Defendant-Appellant.*

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**On Appeal from the United States District Court  
for the Southern District of California**  
No. 3:17-cv-01017-BEN-JLB  
The Honorable Roger T. Benitez, Judge

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**DECLARATION OF JOHN D. ECHEVERRIA  
IN SUPPORT OF EMERGENCY MOTION UNDER CIRCUIT RULE 27-3  
FOR A STAY PENDING APPEAL AND FOR AN INTERIM  
ADMINISTRATIVE STAY**

**RELIEF REQUESTED BY OCTOBER 2, 2023**

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September 26, 2023

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## DECLARATION OF JOHN D. ECHEVERRIA

I, John D. Echeverria, declare:

1. I am a Deputy Attorney General with the California Department of Justice and serve as counsel to Defendant-Appellant Rob Bonta, in his official capacity as Attorney General of the State of California, in the above-captioned matter. I make this declaration in support of the Emergency Motion under Circuit Rule 27-3 for a Stay Pending Appeal and for an Interim Administrative Stay, for which immediate relief is requested. Except as otherwise stated herein, I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently as to those facts.

2. This case is an appeal from the district court's order entered on September 22, 2023, declaring California Penal Code section 32310 ("Section 32310") unconstitutional under the Second Amendment and permanently enjoining its enforcement. Section 32310 imposes certain restrictions on magazines capable of holding more than ten rounds of ammunition, defined as "large-capacity magazines." D. Ct. Dkt. 149. The district court stayed enforcement of its order for ten days, and that temporary stay will expire on October 2, 2023. Attached hereto as **Exhibit 1** is a true and correct copy of the district court's decision permanently enjoining enforcement of Section 32310.



3. On May 17, 2017, the initial complaint was filed in this action, asserting that Section 32310, in its entirety, violates the Second Amendment and that the possession restrictions codified at Sections 32310(c) and (d), also violate the Takings Clause and the Due Process Clause. D. Ct. Dkt. 1.

4. On May 26, 2017, Plaintiffs Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, and California Rifle & Pistol Association Inc. (collectively, Plaintiffs) filed a motion for preliminary injunction, seeking to enjoin the Attorney General, his agents, employees, and those working in active concert with him from enforcing Sections 32310(c) and (d). D. Ct. Dkt. 6.

5. The Attorney General opposed the motion for preliminary injunction on June 5, 2017. D. Ct. Dkt. 9.

6. The district court held a hearing on the preliminary injunction on June 13, 2017. On June 29, 2017, the district court issued a preliminary injunction enjoining enforcement of Sections 32310(c) and (d). D. Ct. Dkt. 28. This Court affirmed the preliminary injunction in an unpublished memorandum. *See Duncan v. Becerra*, 742 Fed. App'x 218, 221-222 (9th Cir. 2018).

7. In March 2018, while the interlocutory appeal was pending, Plaintiffs filed a motion for summary judgment on all claims. D. Ct. Dkt. 50. The Attorney General opposed the motion. D. Ct. Dkt. 53. Attached hereto as

**Exhibit 2** is a true and correct copy of the Expert Report of Dr. Louis Klarevas, which was attached as Exhibit 3 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment.

8. Attached hereto as **Exhibit 3** is a true and correct copy of the Expert Report of Dr. Christopher S. Koper, which was attached as Exhibit 4 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment.

9. Attached hereto as **Exhibit 4** is a true and correct copy of Dep't of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Recommendation on the Importability of Certain Semiautomatic Rifles* (1989), which was attached as Exhibit 12 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment.

10. In March 2019, the district court issued an order granting Plaintiffs' motion for summary judgment, and entered judgment in favor of Plaintiffs. D. Ct. Dkt. 87. The Attorney General timely appealed that order and judgment on April 4, 2019. D. Ct. Dkt. 96. The district court stayed enforcement of its judgment pending appeal later that day. D. Ct. Dkt. 97. The stay order provided that, during

the appeal, the preliminary injunction of Sections 32310(c) and (d) would remain in effect and that the permanent injunction of Section 32310(a) and (b) would remain in effect for any person or business who had manufactured, imported, sold, or bought an LCM between the entry of the judgment on March 29, 2019 and 5:00 p.m. the following day, when the stay order would take effect. D. Ct. Dkt. 97 at 6.

11. In August 2020, a three-judge panel of this Court affirmed the district court's judgment. *Duncan v. Becerra*, 970 F.3d 1133 (9th Cir. 2020). The en banc Court subsequently reversed the district court's judgment and instructed the district court to enter judgment in the Attorney General's favor. *Duncan v. Bonta*, 19 F.4th 1087, 1113 (9th Cir. 2021) (en banc), *cert. granted, judgment vacated*, 142 S. Ct. 2895 (2022), *vacated and remanded*, 49 F.4th 1228 (9th Cir. 2022) (en banc). The en banc Court stayed the issuance of the mandate for 150 days or until final disposition of the case if the plaintiffs filed a petition for a writ of certiorari. No. 19-55376, Dkt. 169 (9th Cir. Dec. 20, 2021) (en banc).

12. Plaintiffs filed a petition for writ of certiorari with the U.S. Supreme Court in February 2022. *Duncan v. Bonta*, No. 21-1194 (Feb. 28, 2022). On June 23, 2022, the U.S. Supreme Court issued its decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

13. On June 30, 2022, the Supreme Court granted the petition for writ of certiorari, vacated the en banc Court's judgment, and remanded the case for

“further consideration in light of” *Bruen*. *Duncan v. Bonta*, 142 S. Ct. 2895 (2022). This Court then directed the parties to “file supplemental briefs on the effect of *Bruen* on this appeal, including whether the en banc panel should remand this case to the district court for further proceedings in the first instance.” *Duncan v. Bonta*, No. 19-55376, Dkt. 202. The Court remanded the case to the district court for further proceedings consistent with *Bruen*. *Id.*, Dkt. 215.

14. Thereafter, on September 26, 2022, the district court entered an order spreading the mandate. D. Ct. Dkt. 111. In that order, the district court provided that its previously entered preliminary injunction enjoining enforcement of Sections 32310(c) and (d) would remain in effect “for all those who previously acquired and possessed magazines legally (including those persons and business entities who acquired magazines between March 29 and April 5, 2019).” *Id.*

15. On November 10, 2022, the Attorney General filed a supplemental brief, including ten declarations from historians, academics, and social scientists, addressing issues relevant to the *Bruen* standard. D. Ct. Dkt. 118.

16. Attached hereto as **Exhibit 5** is a true and correct copy of the Supplemental Declaration of Lucy P. Allen, dated November 10, 2022 and submitted with the Attorney General’s November 10 supplemental brief (D. Ct. Dkt. 118-1).

17. Attached hereto as **Exhibit 6** is a true and correct copy of the Declaration of Dennis Baron, dated November 7, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-2).

18. Attached hereto as **Exhibit 7** is a true and correct copy of the Declaration of Ryan Busse, dated November 9, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-3).

19. Attached hereto as **Exhibit 8** is a true and correct copy of the Declaration of Saul Cornell, dated November 10, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-4).

20. Attached hereto as **Exhibit 9** is a true and correct copy of the Supplemental Declaration of John J. Donohue, dated November 8, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-5).

21. Attached hereto as **Exhibit 10** is a true and correct copy of the Supplemental Declaration of Louis Klarevas, dated November 10, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-6).

22. Attached hereto as **Exhibit 11** is a true and correct copy of the Declaration of Brennan Rivas, dated November 8, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-7).

23. Attached hereto as **Exhibit 12** is a true and correct copy of the Declaration of Randolph Roth, dated November 9, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-8).

24. Attached hereto as **Exhibit 13** is a true and correct copy of the Declaration of Robert Spitzer, dated November 10, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-9).

25. Attached hereto as **Exhibit 14** is a true and correct copy of the Declaration of Michael Vorenberg, dated November 10, 2022 and submitted with the Attorney General's November 10 supplemental brief (D. Ct. Dkt. 118-10).

26. In his supplemental brief, the Attorney General requested that the court stay any adverse judgment pending appeal. D. Ct. Dkt. 118 at 61-63.

27. Plaintiffs filed a supplemental brief on December 1, 2022, D. Ct. Dkt. 130.

28. On December 12, 2022, the district court held a status conference and a hearing in this case, consolidated with hearings in three other Second Amendment cases pending before the Court in which the Attorney General is a defendant: *Miller v. Bonta*, No. 3:19-cv-1537-BEN-JLB (challenge to California's Assault Weapons Control Act); *Rhode v. Bonta*, No. 3:18-cv-00802-BEN-JLB (challenge to background check requirement for ammunition purchases); and *Fouts v. Bonta*, 3:19-cv-01662-BEN-JLB (challenge to restrictions on billy clubs).

Attached hereto as **Exhibit 15** is a true and correct copy of the transcript of the December 12 hearing.

29. During the December 12 hearing, the district court ordered the Attorney General to prepare spreadsheets or surveys of relevant historical laws within 30 days. Ex. 15 at 38. The court ordered the Attorney General to prepare a survey of laws “in effect at the time the Second Amendment was adopted” through the year 1888 (20 years after ratification of the Fourteenth Amendment to the United States Constitution). *Id.* at 29-30. The court also permitted the Attorney General to prepare a second survey of laws enacted after 1888. *Id.* at 32-33. This order was issued in all four cases heard during the December 12 hearing.

30. On December 15, 2022, the district court entered the same order in all four Second Amendment cases before the court at the consolidated hearing. This order required the Attorney General to “create, and the plaintiffs shall meet and confer regarding, a survey or spreadsheet of relevant statutes, laws, or regulations in chronological order” that shall “begin at the time of the adoption of the Second Amendment and continue through twenty years after the Fourteenth Amendment.” D. Ct. Dkt. 134. The order also permitted the Attorney General to create a second survey “covering a time period following that of the first list.” *Id.*

31. On January 11, 2023, the Attorney General filed two surveys of relevant state, territorial, and local laws, ordinances, regulations, and authorities

that the Attorney General views as relevantly similar analogues to the challenged provisions in this matter: one survey of laws enacted from the pre-founding period to 1888 and a separate survey from 1889 through the 1930s. D. Ct. Dkt. 139. Attached hereto as **Exhibit 16** is a true and correct copy of the Declaration of John D. Echeverria re Submission of Surveys and the two annexed surveys of relevant laws.

32. On February 7, 2023, the district court issued an order requiring the Attorney General to file an additional brief identifying “the best historical regulation that is a proper analogue and relevantly similar to a statewide prohibition on possession of an ammunition device or a limit on an amount of ammunition.” D. Ct. Dkt. 140. This additional brief was to be filed on February 10, 2023, three days after entry of that order.

33. On February 10, 2023, the parties filed supplemental briefs. D. Ct. Dkts. 141-143. The Attorney General’s brief was accompanied by a declaration of counsel, attaching copies of additional expert witness declarations relevant to this action that were prepared after the filing of the Attorney General’s December 13 supplemental brief. D. Ct. Dkt. 142-1.

34. Attached hereto as **Exhibits 17** and **18** are true and correct copies of excerpts from the transcript of the Deposition of Stephen C. Helsley, dated January 19, 2023, from the matter, *Oregon Firearms Fed’n v. Brown*, U.S. District



Court for the District of Oregon, Case Nos. 2:22-cv-01815-IM, 3:22-cv-01859-IM, 3:22-cv-01862-IM, 3:22-cv-01869-IM, *appeal docketed*, Nos. 23-35478, 23-35479 (9th Cir. July 17, 2023), and submitted with the Attorney General's February 10 supplemental brief in this matter.

35. Attached hereto as **Exhibit 19** is a true and correct copy of the Supplemental Expert Report and Declaration of Colonel (Ret.) Craig Tucker, dated January 6, 2023, served in the matter, *Rupp v. Bonta*, No. 8:17-cv-00746-JLS-JDE (C.D. Cal.), and submitted with the Attorney General's February 10 supplemental brief in this matter.

36. Attached hereto as **Exhibit 20** is a true and correct copy of the Declaration of Kevin Sweeney, dated February 5, 2023, filed in *Oregon Firearms Fed'n v. Brown*, U.S. District Court for the District of Oregon, Case Nos. 2:22-cv-01815-IM, 3:22-cv-01859-IM, 3:22-cv-01862-IM, 3:22-cv-01869-IM (D. Or.), *appeal docketed*, Nos. 23-35478, 23-35479 (9th Cir. July 17, 2023), and submitted with the Attorney General's February 10 supplemental brief.

37. The supplemental brief repeated the Attorney General's request for a stay of any adverse judgment, at least for a sufficient period to allow him to seek a stay from this Court. D. Ct. Dkt. 142 at 25 n.26.

38. On February 10, 2023, the Attorney General filed a brief in compliance with the district court's February 7 order. D. Ct. Dkt. 143.

39. On February 21, 2023, the parties filed supplemental responsive briefs. D. Ct. Dkt. 144, 145. In his responsive brief, the Attorney General reiterated a request for a stay of any adverse judgment for a sufficient period to allow him to seek a stay from this Court. D. Ct. Dkt. 145 at 10 n.10.

40. On September 22, 2023, the district court issued an order declaring that Section 32310 violates the Second Amendment and enjoining permanently its enforcement. Ex. 1 at 71. The court stayed enforcement of its order for 10 days from the date of its issuance, *id.*, and that temporary stay is set to expire on October 2, 2023.

41. On September 26, 2023, I conferred with Plaintiffs' counsel, Anna M. Barvir, by telephone to inform Plaintiffs that the Attorney General was planning to seek a stay pending appeal from this Court, consistent with the district court's decision. I inquired whether Plaintiffs oppose the Attorney General's motion for a stay of the order and permanent injunction pending appeal to preserve the status quo. I was informed that Plaintiffs oppose this emergency motion, though they agree with the State's election not to seek a stay with respect to the portions of the district court's injunction of Sections 32310(c) and (d) for large-capacity magazines that were lawfully acquired before the district court's order.

42. The Attorney General seeks an immediate stay of the order and permanent injunction pending appeal to preserve the longstanding status quo. An

immediate stay is needed to prevent irreparable harm to the Attorney General that would result if the challenged provisions of Section 32310 were enjoined during this appeal; if the decision is ultimately reversed on appeal, it would be impracticable, if not impossible, to remove large-capacity magazines that entered the State during the appeal. A stay pending appeal will preserve enforcement of a vital public safety measure that has been in effect for decades and is in the public interest.

43. The Attorney General's concerns are not theoretical, in light of what occurred in 2019 after the district court issued its prior judgment without any stay. *Duncan v. Becerra*, 366 F. Supp. 3d 1131 (S.D. Cal. 2019), *aff'd*, 970 F.3d 1133 (9th Cir. 2020), *reh'g en banc granted*, 988 F.3d 1209 (2021), *rev'd*, 19 F.4th 1087 (9th Cir. 2021) (en banc), *cert. granted, judgment vacated*, 142 S. Ct. 2895 (2022), *vacated and remanded*, 49 F.4th 1228 (9th Cir. 2022). While the Attorney General promptly applied to the district court *ex parte* for an immediate stay pending appeal and a temporary stay pending disposition of the stay application, the district court did not issue a stay pending appeal until four days later, making the stay effective the following day and permitting anyone who acquired a large-capacity magazine during the interim following the entry of judgment to keep them during the appeal. D. Ct. Dkt. 97 at 6. During the period between the entry of judgment on March 29, 2019 and the eventual stay pending appeal that took effect

on April 4, 2019, over one million large-capacity magazines reportedly flooded into the State. Many remain in the State to this day. Attached hereto as **Exhibit 21** is a true and correct copy of Matthew Green, *Gun Groups: More than a Million High-Capacity Magazines Flooded California During Weeklong Ban Suspension*, KQED.org, Apr. 12, 2019, available at <https://bit.ly/3wfinEU> (last visited September 26, 2023).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2023, at San Francisco, California.

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s/ John D. Echeverria

John D. Echeverria

## INDEX OF EXHIBITS

Exhibit	Document Description
1	Decision, dated September 22, 2023 (D. Ct. Dkt. 149)
2	Expert Report of Dr. Louis Klarevas (Decl. of John D. Echeverria in Supp. of Def.'s Opp'n. to Pls.' Mot. for Summ. J., Ex. 3) (D. Ct. Dkt. 53-4)
3	Expert Report of Dr. Christopher S. Koper (Decl. of John D. Echeverria in Supp. of Def.'s Opp'n. to Pls.' Mot. for Summ. J., Ex. 4) (D. Ct. Dkt. 53-5)
4	Dep't of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, <i>Recommendation on the Importability of Certain Semiautomatic Rifles</i> (1989) (Decl. of John D. Echeverria in Supp. of Def.'s Opp'n. to Pls.' Mot. for Summ. J., Ex. 12) (D. Ct. Dkt. 53-7)
5	Supplemental Declaration of Lucy P. Allen, dated November 10, 2022 (D. Ct. Dkt. 118-1)
6	Declaration of Dennis Baron, dated November 7, 2022 (D. Ct. Dkt. 118-2)
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14	Declaration of Michael Vorenberg, dated November 10, 2022 (D. Ct. Dkt. 118-10)
15	Reporter Transcript of the December 12, 2022 Consolidated Hearing/Status Conference, <i>Duncan v. Bonta</i> , No. 3:17-cv-01017-BEN-JLB (S.D. Cal.); <i>Miller v. Bonta</i> , No. 3:19-cv-1537-BEN-JLB (S.D. Cal.); <i>Rhode v. Bonta</i> , No. 3:18-cv-00802-BEN-JLB (S.D. Cal.); and <i>Fouts v. Bonta</i> , No. 3:19-cv-01662-BEN-JLB (S.D. Cal.)
16	Declaration of John D. Echeverria re Submission of Surveys and the Two Annexed Surveys of Relevant Laws, dated January 11, 2023 (D. Ct. Dkt. 139)
17	Excerpts from the transcript of the Deposition of Stephen C. Helsley – Vol. I, <i>Oregon Firearms Fed’n v. Brown</i> , Nos. 2:22-cv-01815-IM, 3:22-cv-01859-IM, 3:22-cv-01862-IM, 3:22-cv-01869-IM (D. Or. Jan. 19, 2023) (Decl. of John D. Echeverria in Supp. of Def.’s Brief in Response to the Court’s Order Entered on December 15, 2022, Ex. 1) (D. Ct. Dkt. 142-1)

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18	Excerpts from the transcript of the Deposition of Stephen C. Helsley – Vol. II, <i>Oregon Firearms Fed’n v. Brown</i> , Nos. 2:22-cv-01815-IM, 3:22-cv-01859-IM, 3:22-cv-01862-IM, 3:22-cv-01869-IM (D. Or. Jan. 30, 2023) (Decl. of John D. Echeverria in Supp. of Def.’s Brief in Response to the Court’s Order Entered on December 15, 2022, Ex. 2) (D. Ct. Dkt. 142-1)
19	Supplemental Expert Report and Declaration of Colonel (Ret.) Craig Tucker, <i>Rupp v. Bonta</i> , No. 8:17-cv-00746-JLS-JDE (C.D. Cal. Jan. 6, 2023) (Decl. of John D. Echeverria in Supp. of Def.’s Brief in Response to the Court’s Order Entered on December 15, 2022, Ex. 3) (D. Ct. Dkt. 142-1)
20	Declaration of Kevin Sweeney, <i>Oregon Firearms Fed’n v. Brown</i> , Nos. 2:22-cv-01815-IM, 3:22-cv-01859-IM, 3:22-cv-01862-IM, 3:22-cv-01869-IM (D. Or. Feb. 5, 2023) (Decl. of John D. Echeverria in Supp. of Def.’s Brief in Response to the Court’s Order Entered on December 15, 2022, Ex. 4) (D. Ct. Dkt. 142-1)
21	Matthew Green, <i>Gun Groups: More than a Million High-Capacity Magazines Flooded California During Weeklong Ban Suspension</i> , KQED.org, Apr. 12, 2019, <a href="https://bit.ly/3wfinEU">https://bit.ly/3wfinEU</a>

## **EXHIBIT 1**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VIRGINIA DUNCAN, et al.,  
Plaintiffs,

v.

ROB BONTA, in his capacity as Attorney  
General of the State of California,  
Defendant.

Case No.: 17-cv-1017-BEN (JLB)

**DECISION**

We begin at the end. California's ban and mandatory dispossession of firearm magazines holding more than 10 rounds (California Penal Code § 32310(c) and (d)), as amended by Proposition 63, was preliminarily enjoined in 2017.<sup>1</sup> That decision was affirmed on appeal.<sup>2</sup> In 2019, summary judgment was granted in favor of Plaintiffs and § 32310 in its entirety was judged to be unconstitutional.<sup>3</sup> Initially, that decision was also

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<sup>1</sup> *Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1138 (S.D. Cal. 2017).

<sup>2</sup> *Duncan v. Becerra*, 742 F. App'x 218, 221 (9th Cir. 2018).

<sup>3</sup> *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1133 (S.D. Cal. 2019).

affirmed on appeal.<sup>4</sup> However, the decision was re-heard and reversed by the court of appeals *en banc*.<sup>5</sup> In 2022, the United States Supreme Court granted certiorari, vacated the appellate *en banc* decision, and remanded the case.<sup>6</sup> The court of appeals, in turn, remanded the case to this Court “for further proceedings consistent with *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).”<sup>7</sup> All relevant findings of fact and conclusions of law set forth in the prior decision concluding § 32310 is unconstitutional are incorporated herein.

## **I. INTRODUCTION**

“There is a long tradition of widespread lawful gun ownership by private individuals in this country,” according to the United States Supreme Court.<sup>8</sup> Americans have an individual right to keep and bear firearms.<sup>9</sup> The Second Amendment to the United States Constitution “guarantee[s] the individual right to possess and carry weapons in case of confrontation.”<sup>10</sup> This guarantee is fully binding on the States and limits their ability to devise solutions to social problems.<sup>11</sup> And the guarantee protects “the possession of weapons that are ‘in common use,’”<sup>12</sup> or arms that are “typically

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<sup>4</sup> *Duncan v. Becerra*, 970 F.3d 1133, 1147 (9th Cir. 2020), *reh’g en banc granted, opinion vacated*, 988 F.3d 1209 (9th Cir. 2021).

<sup>5</sup> *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (*en banc*).

<sup>6</sup> *Duncan v. Bonta*, 142 S. Ct. 2895 (2022).

<sup>7</sup> *Duncan v. Bonta*, 49 F.4th 1228, 1231 (9th Cir. 2022).

<sup>8</sup> *Staples v. United States*, 511 U.S. 600, 610 (1994).

<sup>9</sup> *District of Columbia v. Heller*, 554 U.S. 570, 630 (1980).

<sup>10</sup> *Id.* at 606 (quoting 2 Tucker’s Blackstone 143) (“This may be considered as the true palladium of liberty .... The right to self defence is the first law of nature: in most governments it has been the study of rulers to confine the right within the narrowest limits possible.”).

<sup>11</sup> *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 785 (2010) (emphasis in original).

<sup>12</sup> *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2128 (2022).

1 possessed by law-abiding citizens for lawful purposes.”<sup>13</sup> These are the decisions this  
2 Court is bound to apply. “It’s our duty as judges to interpret the Constitution based on  
3 the text and original understanding of the relevant provision—not on public policy  
4 considerations, or worse, fear of public opprobrium or criticism from the political  
5 branches.”<sup>14</sup>

6 This case is about a California state law that makes it a crime to keep and bear  
7 common firearm magazines typically possessed for lawful purposes. Based on the text,  
8 history, and tradition of the Second Amendment, this law is clearly unconstitutional.

9 The detachable firearm magazine solved a problem with historic firearms: running  
10 out of ammunition and having to slowly reload a gun.<sup>15</sup> When more ammunition is  
11 needed in case of confrontation, a larger the magazine is required. Many gun owners  
12 want to have ready more than 10 rounds in their guns. As a result, in the realm of  
13 firearms, magazines that hold more than 10 rounds are possibly the most commonly  
14 owned thing in America. These larger magazines number over one hundred million. For  
15 handguns, the most popular sizes range up to 17 rounds; the most popular size for rifles is  
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20 <sup>13</sup> *Caetano v. Massachusetts*, 577 U.S. 411, 416 (Alito and Thomas concurring) (quoting  
21 *Heller*, 554 U.S. at 625, in turn quoting *United States v. Miller*, 307 U.S. 174, 179  
22 (1939)) (“We therefore read *Miller* to say only that the Second Amendment does not  
23 protect those weapons not typically possessed by law-abiding citizens for lawful  
24 purposes.”)

24 <sup>14</sup> *United States v. Rahimi*, 61 F.4th 443, 462 (5th Cir. 2023) (Ho, J., concurring)  
(citations omitted).

25 <sup>15</sup> *United States v. Gonzalez*, 792 F. 3d. 534, 536–37 (5th Cir. 2015) (“The problem of  
26 limited ammunition capacity has plagued rifles since their invention centuries ago. The  
27 earliest rifles fired a single shot, leaving the user vulnerable during reloading. Numerous  
28 inventions have sought to eliminate this problem. But from repeating rifles to clips, none  
has proved as effective as the magazine.”) (citing David B. Kopel, *The History of  
Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. R. 849 (2015)).

1 30 rounds. Yet, regardless of the overwhelming popularity of larger magazines,  
2 California continues to prohibit any magazine capable of holding more than 10 rounds.<sup>16</sup>

3 There is no American tradition of limiting ammunition capacity and the 10-round  
4 limit has no historical pedigree and it is arbitrary and capricious. It is extreme. Our  
5 federal government and most states impose no limits<sup>17</sup> and in the states where limits are  
6 imposed, there is no consensus. Delaware landed on a 17-round magazine limit.<sup>18</sup>  
7 Illinois and Vermont picked limits of 15 rounds for handguns and 10 rounds for a rifles.<sup>19</sup>  
8 Colorado went with a 15-round limit for handguns and rifles, and a 28-inch tube limit for  
9 shotguns.<sup>20</sup> New York tried its luck at a 7-round limit; that did not work out.<sup>21</sup> New  
10 Jersey started with a 15-round limit and then reduced the limit to 10-rounds.<sup>22</sup> The fact  
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12

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13  
14 <sup>16</sup> See Cal. Penal Code § 32310 and § 16740. The term “large-capacity magazine” is  
15 defined in California Penal Code § 16740 as “any ammunition feeding device with the  
16 capacity to accept more than 10 rounds,” but excludes: (a) a “feeding device that has been  
17 permanently altered so that it cannot accommodate more than 10 rounds,” (b) a “.22  
18 caliber tube ammunition feeding device,” and (c) a “tubular magazine that is contained in  
19 a lever-action firearm.”

20 <sup>17</sup> Federal law imposes only a sentencing enhancement. United States Sentencing  
21 Guideline § 2K2.1(a)(4)(B) increases the base offense level for a violation of 18 U.S.C. §  
22 922(g)(1) (felon in possession) when the offense involves a firearm with an attached  
23 magazine larger than 15 rounds. *United States v. Lucas*, No. 22-50064, 2023 U.S. App.  
LEXIS 14768, at \*7 (9th Cir. June 14, 2023).

24 <sup>18</sup> *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, Civil  
25 Action No. 22-951-RGA, 2023 U.S. Dist. LEXIS 51322, at \*4 (D. Del. Mar. 27, 2023)  
26 (“‘Large-capacity magazine[s]’ are those ‘capable of accepting, or that can readily be  
27 converted to hold, more than 17 rounds of ammunition.’”).

28 <sup>19</sup> 720 ILCS 5/24-1.10(a); Vt. Stat. Ann. tit. 13, § 4021.

<sup>20</sup> Colo. Rev. Stat. Ann. § 18-12-301.

<sup>21</sup> The 7-round limit was found to be unconstitutional. *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 269 (2d Cir. 2015).

<sup>22</sup> “New Jersey once imposed a fifteen-round limit on magazine capacity. Now it claims a lower limit of ten is essential for public safety. The Second Amendment demands more than back-of-the-envelope math.” *Ass’n of N.J. Rifle & Pistol Clubs Inc. v. AG N.J.*, 974 F.3d 237, 260 (3d Cir. 2020) (Matey, J. dissenting).

1 that there are so many different numerical limits demonstrates the arbitrary nature of  
2 magazine capacity limits.

3 In a stealth return to the interest balancing test rejected by *Heller* and *Bruen*, the  
4 State ostensibly justifies its magazine limits by deeming the smaller magazines “well-  
5 suited” for its citizens.<sup>23</sup> Suitability, in turn, is based on concocted statistics about what a  
6 hypothetical average person needs to defend against an attacker or attackers in an average  
7 self-defense situation. Based on this hypothetical statistically average case scenario, the  
8 State permits its citizen to have a gun, but the State decides the number of rounds in the  
9 gun that it finds suitable.<sup>24</sup>

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12 <sup>23</sup> At least a dozen times in its briefing before this Court, the State of California insists  
13 magazines larger than 10 rounds are unsuitable. Here are some examples. “[T]he  
14 Attorney General has demonstrated that LCMs are not necessary or even *suitable* to  
15 engage in private self-defense.” Dkt. 145, at 9. “Nor are LCMs particularly *suitable* for  
16 self-defense.” Dkt. 142, at 8. “[T]he accessory at issue here (an LCM) is not *well-suited*  
17 for lawful self-defense.” *Id.*

18 <sup>24</sup> And be grateful for 10 rounds. *Duncan*, 19 F.4th at 1168 n.10, *cert. granted, judgment*  
19 *vacated*, 142 S. Ct. 2895 (2022), *and vacated and remanded*, 49 F.4th 1228 (9th Cir.  
20 2022) (Bumatay, J., dissenting) (“California currently allows more than 2.2 rounds in a  
21 magazine, and does not prohibit carrying multiple magazines. But don’t be fooled.  
22 Under the majority’s Version 2.2 of the Second Amendment, there is no reason a state  
23 couldn’t limit its citizens to carrying a (generous) 3 rounds total for self-defense.”).

24 As this Court explained in its prior decision, “[a]rtificial limits will eventually lead  
25 to disarmament. It is an insidious plan to disarm the populace and it depends on for its  
26 success a subjective standard of ‘necessary’ lethality. It does not take the imagination of  
27 Jules Verne to predict that if all magazines over 10 rounds are somehow eliminated from  
28 California, the next mass shooting will be accomplished with guns holding only 10  
rounds. To reduce gun violence, the state will close the newly christened 10-round  
‘loophole’ and use it as a justification to outlaw magazines holding more than 7 rounds.  
The legislature will determine that no more than 7 rounds are ‘necessary.’ Then the next  
mass shooting will be accomplished with guns holding 7 rounds. To reduce the new gun  
violence, the state will close the 7-round ‘loophole’ and outlaw magazines holding more  
than 5 rounds determining that no more than 5 rounds are ‘suitable.’ And so it goes, until  
the only lawful firearm law-abiding responsible citizens will be permitted to possess is a  
single-shot handgun. Or perhaps, one gun, but no ammunition. Or ammunition issued  
only to persons deemed trustworthy.” *Duncan*, 366 F. Supp. 3d at 1146 n.33.

1 In so doing, the State denies a citizen the federal constitutional right to use  
 2 common weapons of their own choosing for self-defense. There have been, and there  
 3 will be, times where many more than 10 rounds are needed to stop attackers.<sup>25</sup> Yet,

4  
 5  
 6 <sup>25</sup> Some have wishfully believed “there is no evidence that anyone ever has been unable  
 7 to defend his or her home and family due to the lack of a large-capacity magazine,” or  
 8 that more than 10 rounds is ever needed. But there is actually the evidence to support  
 9 this. In fact, the State’s own expert reports otherwise.

10 *See Duncan*, 366 F. Supp. 3d at 1134 (“As two masked and armed men broke in,  
 11 Susan Gonzalez was shot in the chest. She made it back to her bedroom and found her  
 12 husband’s .22 caliber pistol. Wasting the first rounds on warning shots, she then emptied  
 13 the single pistol at one attacker. Unfortunately, now out of ammunition, she was shot  
 14 again by the other armed attacker. She was not able to re-load or use a second gun. Both  
 15 she and her husband were shot twice. Forty-two bullets in all were fired. The gunman  
 16 fled from the house—but returned. He put his gun to Susan Gonzalez’s head and  
 17 demanded the keys to the couple’s truck.

18 When three armed intruders carrying what look like semi-automatic pistols broke  
 19 into the home of a single woman at 3:44 a.m., she dialed 911. No answer. Feng Zhu  
 20 Chen, dressed in pajamas, held a phone in one hand and took up her pistol in the other  
 21 and began shooting. She fired numerous shots. She had no place to carry an extra  
 22 magazine and no way to reload because her left hand held the phone with which she was  
 23 still trying to call 911. After the shooting was over and two of the armed suspects got  
 24 away and one lay dead, she did get through to the police. The home security camera  
 25 video is dramatic.

26 A mother, Melinda Herman, and her nine-year-old twins were at home when an  
 27 intruder broke in. She and her twins retreated to an upstairs crawl space and hid.  
 28 Fortunately, she had a .38 caliber revolver. She would need it. The intruder worked his  
 way upstairs, broke through a locked bedroom door and a locked bathroom door, and  
 opened the crawl space door. The family was cornered with no place to run. He stood  
 staring at her and her two children. The mother shot six times, hitting the intruder five  
 times, when she ran out of ammunition. Though injured, the intruder was not  
 incapacitated. Fortunately, he decided to flee.”) (Citations omitted).

More examples have been reported since those words were written. When four  
 suspects in a stolen car with stolen guns and ammunition used stolen house keys to enter  
 the victims’ home in Tallahassee, Florida at 3:37 a.m., the victim fired 25 rounds before  
 the suspects retreated out of the home. *Police: Tallahassee homeowner shot 2 out of 4*  
*home invasion suspects, all 4 charged*, ABC27 WTXL (May 24, 2019)  
<https://www.wtxl.com/news/local-news/tpd-investigating-home-invasion-robbery>  
[\[https://perma.cc/AQ36-S2ZH\]](https://perma.cc/AQ36-S2ZH).



1 under this statute, the State says “too bad.” It says, if you think you need more than 10  
2 chances to defend yourself against criminal attackers, you must carry more magazines.  
3 Or carry more bullets to hand reload and fumble into your small magazine while the  
4 attackers take advantage of your pause. On the other hand, you can become a criminal,  
5 too. So, the previously law-abiding California citizen who buys and keeps at her bedside  
6 a nationally popular Glock 17 (with its standard 17-round magazine) becomes the  
7 criminal, because the State dictates that a gun with a 17-round magazine is not well-  
8 suited for home defense.<sup>26</sup>

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16 In Kentucky, when a home intruder wearing a bulletproof vest shot and killed one  
17 daughter asleep in her bed, the father awoke and needed to fire 11 shots from one gun and  
18 8 shots from a second gun, while suffering 3 gunshot wounds himself, to protect his other  
19 daughter, his wife, and himself. Krista Johnson and Hayes Gardner, *Jordan Morgan’s*  
20 *death: Suspect Shannon Gilday arrested in Madison County*, Louisville Courier J. (Feb.  
21 28, 2022), [https://www.courier-journal.com/story/news/local/2022/02/28/shannon-gilday-](https://www.courier-journal.com/story/news/local/2022/02/28/shannon-gilday-arrested-in-jordan-morgan-richmond-ky-shooting/6941351001/)  
22 [arrested-in-jordan-morgan-richmond-ky-shooting/6941351001/](https://www.courier-journal.com/story/news/local/2022/02/28/shannon-gilday-arrested-in-jordan-morgan-richmond-ky-shooting/6941351001/) [[https://perma.cc/Q49M-](https://perma.cc/Q49M-ZFF9)  
23 [ZFF9](https://perma.cc/Q49M-ZFF9)].

24 On a Chicago train this year, a citizen was robbed at gunpoint by a suspect who  
25 had been previously arrested 32 times. The victim, a bank security guard, shot back 18  
26 times (4 of the rounds jammed) before the suspect retreated off the train. *Arrested 32*  
27 *times since 2014, man allegedly engaged in a ‘firefight’ with a concealed carry holder on*  
28 *a CTA train*, CWBChicago (Jan. 22, 2023), [https://cwbchicago.com/2023/01/arrested-32-](https://cwbchicago.com/2023/01/arrested-32-times-since-2014-man-allegedly-engaged-in-a-firefight-with-a-concealed-carry-holder-on-a-cta-train.html)  
[times-since-2014-man-allegedly-engaged-in-a-firefight-with-a-concealed-carry-holder-](https://cwbchicago.com/2023/01/arrested-32-times-since-2014-man-allegedly-engaged-in-a-firefight-with-a-concealed-carry-holder-on-a-cta-train.html)  
[on-a-cta-train.html](https://cwbchicago.com/2023/01/arrested-32-times-since-2014-man-allegedly-engaged-in-a-firefight-with-a-concealed-carry-holder-on-a-cta-train.html) [<https://perma.cc/EAV2-8F2E>].

<sup>26</sup> Criminals sometimes do not abide by gun regulations and pass around “gang guns”  
with magazines larger than 10 rounds. *See, e.g., People v. Cyrus*, No. E075271, 2023  
Cal. App. Unpub. LEXIS 1301, at \*5 (Mar. 3, 2023) (describing a Glock .40 cal. handgun  
and 29-round magazine and explaining, “[a] ‘gang gun’ is a gun that is passed around the  
gang and used by numerous gang members to commit crimes.).

Numbers vary, but some estimate that 81 million Americans own between 415<sup>27</sup> and 456<sup>28</sup> million firearms. Further, millions of Americans across the country own large capacity magazines. “One estimate . . . shows that . . . civilians possessed about 115 million LCMs out of a total of 230 million magazines in circulation. Put another way, half of all magazines in America hold more than 10 rounds.”<sup>29</sup> A more recent large-scale survey estimates that Americans today own 542 million rifle and handgun magazines that hold more than 10 rounds.<sup>30</sup> Home defense and target shooting are the two most common reasons for owning these larger magazines.<sup>31</sup> Moreover, the survey reports 48% of gun owners have owned a handgun or rifle magazine that holds more than 10 rounds.<sup>32</sup> But California bans these typically possessed magazines kept and used for self-defense.

Why are larger magazines chosen for self-defense? Crime happens a lot. One recent estimate holds that guns are needed defensively approximately 1,670,000 times a year.<sup>33</sup> Another report, originally commissioned and long cited by the Centers for Disease Control and Prevention estimated that there are between 500,000 and 3,000,000

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<sup>27</sup> William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* 7 (Geo. McDonough Sch. of Bus. Rsch. Paper No. 4109494, 2022), available at <https://ssrn.com/abstract=4109494> [<https://perma.cc/83XT-75YG>].

<sup>28</sup> See Suppl. Decl. of Louis Klarevas, Dkt. 137-5 (“Suppl. Klarevas Decl.”), at ¶ 15 and n.13.

<sup>29</sup> *Duncan*, 970 F.3d at 1142, *reh’g en banc granted, opinion vacated*, 988 F.3d 1209 (9th Cir. 2021), *and on reh’g en banc sub nom. Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021), *cert. granted, judgment vacated*, 142 S. Ct. 2895 (2022), *and vacated and remanded*, 49 F.4th 1228 (9th Cir. 2022).

<sup>30</sup> English, *supra*, at 25 (“These estimates suggest that Americans have owned some 542 million rifle and handgun magazines that hold over 10 rounds.”). Plaintiff’s expert, Stephen Helsley, a retired California Department of Justice Assistant Director of the Division of Law Enforcement, estimates there are between 500 million and one billion magazines able to hold more than 10 rounds. See Declaration of Helsley in Support of Plfs.’ Suppl. Br., Exh. 10, Dkt. 132-4, at ¶ 11.

<sup>31</sup> English, *supra*, at 23.

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Id.* at 35.



1 defensive gun uses in the United States every year.<sup>34</sup> Woe to the victim who runs out of  
 2 ammunition before armed attackers do. The police will mark the ground with chalk,  
 3 count the number of shell casings, and file the report.

4 All of this was decided earlier.

5 What remains to be done? California Penal Code § 32310 must be assessed in  
 6 light of *Bruen*. Now, on remand, the State has to justify this ban under *Bruen*, which  
 7 makes clear that “[t]o justify its regulation, the government may not simply posit that the  
 8 regulation promotes an important interest.”<sup>35</sup> After all, “the very enumeration of the  
 9 right takes out of the hands of government—even the Third Branch of Government—the  
 10 power to decide on a case-by-case basis whether the right is really worth insisting  
 11 upon.”<sup>36</sup> So, the State must demonstrate that its extreme ban is consistent with this  
 12 Nation’s historical tradition of firearms regulation. As explained below, there is no  
 13 national tradition of prohibiting or regulating firearms based on firing capacity or  
 14 ammunition capacity.

## 15 **II. CONSTITUTIONAL STANDARDS**

16 The Second Amendment provides: “A well regulated Militia, being necessary to  
 17 the security of a free State, the right of the people to *keep and bear* Arms, shall not be  
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 20 <sup>34</sup> See Inst. of Med. & Nat’l Rsch. Council, *Priorities for Research to Reduce the Threat*  
 21 *of Firearm-Related Violence* 15 (The Nat’l Acads. Press ed., 2013),  
 22 <https://doi.org/10.17226/18319> [<https://perma.cc/K3N4-FEXQ>]. For many years the  
 23 CDC’s “fast facts” webpage referred to this report. The report itself had two different  
 24 ranges. The second range estimated from 60,000 to 2,500,000 annual defensive gun uses  
 25 in America. See Internet Archive Wayback Machine, CDC Firearm Violence Prevention,  
 26 captured July 26, 2021,  
 27 [https://web.archive.org/web/20210726233739/https://www.cdc.gov/violenceprevention/fi](https://web.archive.org/web/20210726233739/https://www.cdc.gov/violenceprevention/firearms/fastfact.html)  
 28 [rearms/fastfact.html](https://web.archive.org/web/20210726233739/https://www.cdc.gov/violenceprevention/firearms/fastfact.html). The Court notes that the CDC has changed its reporting to delete  
 reference to this study and the Court will not comment on how or why that happened as  
 the CDC website does not reflect why it was deleted.

<sup>35</sup> *Bruen*, 142 S. Ct. at 2126.

<sup>36</sup> *Id.* at 2129 (quoting *Heller*, 554 U.S. at 634).

1 infringed.”<sup>37</sup> “[T]he Second Amendment extends, prima facie, to all instruments that  
 2 constitute bearable arms, even those that were not in existence at the time of the  
 3 founding.”<sup>38</sup> According to *Heller*, “[t]he Second Amendment is naturally divided into  
 4 two parts: its prefatory clause and its operative clause. The former does not limit the  
 5 latter grammatically, but rather announces a purpose. The Amendment could be  
 6 rephrased, ‘Because a well regulated Militia is necessary to the security of a free State,  
 7 the right of the people to keep and bear Arms shall not be infringed.’”<sup>39</sup> “The first salient  
 8 feature . . . is that it codifies a ‘right of the people.’”<sup>40</sup> *Heller* then examines the  
 9 substance of the constitutional right, the verbs *to keep* and *to bear* and their object: *arms*.  
 10 So, what does it mean to keep and bear arms?

11 The Supreme Court concludes, “[t]he 18th-century meaning [of “arms”] is no  
 12 different from the meaning today. The 1773 edition of Samuel Johnson’s dictionary  
 13 defined ‘arms’ as ‘weapons of offence, or armour of defence.’ Timothy Cunningham’s  
 14 important 1771 legal dictionary defined ‘arms’ as ‘any thing that a man wears for his  
 15 defence, or takes into his hands, or useth in wrath to cast at or strike another.’”<sup>41</sup> In the  
 16 past, the term “arms” included weapons that were not specifically designed for military  
 17 use and were not employed in a military capacity. “Although one founding-era thesaurus  
 18 limited ‘arms’ . . . to ‘instruments of offence generally made use of in war,’ even that  
 19 source stated that all firearms constituted ‘arms,’” according to *Heller*.<sup>42</sup> And it is now  
 20 clear that “the Second Amendment extends, prima facie, to all instruments that constitute  
 21 bearable arms, even those that were not in existence at the time of the founding.”<sup>43</sup>  
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 24 <sup>37</sup> U.S. Const. amend. II (emphasis added).

25 <sup>38</sup> *Caetano*, 577 U.S. 411 (quoting *Heller*, 554 U.S. at 581).

26 <sup>39</sup> *Heller*, 554 U.S. at 577 (citations omitted).

27 <sup>40</sup> *Heller*, 554 U.S. at 579.

28 <sup>41</sup> *Heller*, 554 U.S. at 581 (citations omitted).

<sup>42</sup> *Heller*, 554 U.S. at 581 (citations omitted).

<sup>43</sup> *Heller*, 554 U.S. at 582.

1 *Heller* later describes the types and kinds of arms that are guaranteed Second  
 2 Amendment protection. But first, *Heller* describes the meanings of “to keep” and “to  
 3 bear” arms.

4 “We turn to the phrases ‘keep arms’ and ‘bear arms.’ Johnson defined ‘keep’ as,  
 5 most relevantly, ‘to retain; not to lose,’ and ‘to have in custody.’ Webster defined it as  
 6 ‘to hold; to retain in one’s power or possession’ . . . Thus the most natural reading of  
 7 ‘keep Arms’ in the Second Amendment is to ‘have weapons.’”<sup>44</sup> “Keep arms,” according  
 8 to *Heller*, “was simply a common way of referring to possessing arms, for militiamen and  
 9 everyone else.”<sup>45</sup> “To bear” meant to carry for the purpose of being armed and ready in  
 10 case of conflict with another person. *Heller* even cited with approval the meaning of the  
 11 phrase “carries a firearm” proposed by Justice Ginsburg in *Muscarello v. United States*:  
 12 “as the Constitution’s Second Amendment indicates: ‘wear, bear, or carry upon the  
 13 person or in the clothing or in a pocket, for the purpose of being armed and ready for  
 14 offensive or defensive action in a case of conflict with another person.’”<sup>46</sup> Providing our  
 15 modern understanding of the Second Amendment’s text, *Heller* concludes, “[p]utting all  
 16 of these textual elements together, we find that they *guarantee the individual right to*  
 17 *possess and carry weapons in case of confrontation.*”<sup>47</sup>

18 Very important in the past, still important in the future, *Heller* describes the  
 19 concept of America’s militia. “In *Miller*, we explained that ‘the Militia comprised all  
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21  
 22 <sup>44</sup> *Heller*, 554 U.S. at 582 (citations omitted).

23 <sup>45</sup> *Heller*, 554 U.S. at 583.

24 <sup>46</sup> *Heller*, 554 U.S. at 584 (quoting *Muscarello*, 524 U.S. 125, 143 (1998) (Ginsburg, J.  
 25 dissenting)).

26 <sup>47</sup> *Heller*, 554 U.S. at 592 (emphasis added). “As the most important early American  
 27 edition of Blackstone’s Commentaries (by the law professor and former Antifederalist St.  
 28 George Tucker) made clear in the notes to the description of the arms right, Americans  
 understood the ‘right of self-preservation’ as permitting a citizen to ‘repel force by force’  
 when ‘the intervention of society in his behalf, may be too late to prevent an injury.’” *Id.*  
 at 595 (quoting 1 Blackstone’s Commentaries, 145-46, n.42 (1803)).

1 males physically capable of acting in concert for the common defense.”<sup>48</sup> And *Heller*  
 2 explains why the militia was important. Two of the three reasons remain important  
 3 today. “There are many reasons why the militia was thought to be ‘necessary to the  
 4 security of a free State.’ First, of course, it is useful in repelling invasions and  
 5 suppressing insurrections. . . . Third, when the able-bodied men of a nation are trained in  
 6 arms and organized, they are better able to resist tyranny.”<sup>49</sup> Once one understands the  
 7 history of tyrants resorting to taking away people’s arms to suppress political opposition,  
 8 *Heller* explains, one can see that the militia clause fits perfectly with the operative clause.  
 9 *Heller* teaches,

10 We reach the question, then: Does the preface fit with an  
 11 operative clause that creates an individual right to keep and bear  
 12 arms? It fits perfectly, once one knows the history that the  
 13 founding generation knew and that we have described above.  
 14 That history showed that the way tyrants had eliminated a  
 15 militia consisting of all the able-bodied men was not by  
 16 banning the militia but simply by taking away the people’s  
 17 arms, enabling a select militia or standing army to suppress  
 18 political opponents. This is what had occurred in England that  
 19 prompted codification of the right to have arms in the English  
 20 Bill of Rights.<sup>50</sup>

18 While the protection of a citizen militia was important, most people regarded the  
 19 Second Amendment as even more important for its protection of self-defense and  
 20 hunting. “The prefatory clause does not suggest that preserving the militia was the only  
 21 reason Americans valued the ancient right; *most undoubtedly thought it even more*  
 22 *important for self-defense and hunting.*”<sup>51</sup> After all, “[t]he right to self defence is the  
 23 first law of nature: in most governments it has been the study of rulers to confine the right  
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 26 <sup>48</sup> *Heller*, 554 U.S. at 595.

27 <sup>49</sup> *Heller*, 554 U.S. at 598 (citations omitted).

28 <sup>50</sup> *Heller*, 554 U.S. at 598.

<sup>51</sup> *Heller*, 554 U.S. at 599 (emphasis added).

1 within the narrowest limits possible. Wherever standing armies are kept up, and the right  
 2 of the people to keep and bear arms is, under any colour or pretext whatsoever,  
 3 prohibited, liberty, if not already annihilated, is on the brink of destruction.”<sup>52</sup> As one  
 4 commentator wrote at the time the Fourteenth Amendment was adopted in 1868, “[t]he  
 5 purpose of the Second Amendment is to secure a well-armed militia. . . . But a militia  
 6 would be useless unless the citizens were enabled to exercise themselves in the use of  
 7 warlike weapons.”<sup>53</sup> In this way, a general public knowledge and skill with weapons of  
 8 war is beneficial to the nation at large and is protected by the Second Amendment. “No  
 9 doubt, a citizen who keeps a gun or pistol under judicious precautions, practices in safe  
 10 places the use of it, and in due time teaches his sons to do the same, exercises his  
 11 individual right.”<sup>54</sup> And “[t]he right to bear arms has always been the distinctive privilege  
 12 of freemen.”<sup>55</sup> In the end, the Supreme Court deems the Second Amendment as valuable  
 13 for both preserving the militia and for self-defense – which is the heart of the right.

14 *McDonald* put it this way:

15           In *Heller*, we recognized that the codification of this right was  
 16           prompted by fear that the Federal Government would disarm  
 17           and thus disable the militias, but we rejected the suggestion that  
 18           the right was valued only as a means of preserving the militias.  
 19           On the contrary, we stressed that the right was also valued  
 20           because the possession of firearms was thought to be essential  
 21           for self-defense. As we put it, self-defense was “the  
 22           central component of the right itself.”<sup>56</sup>

23 <sup>52</sup> *Heller*, 554 U.S. at 606 (citation omitted).

24 <sup>53</sup> *Heller*, 554 U.S. at 618 (quoting J. Pomeroy, *An Introduction to the Constitutional Law*  
 25 *of the United States* §239, pp. 152-153 (1868)).

26 <sup>54</sup> *Heller*, 554 U.S. at 619 (quoting B. Abbott, *Judge and Jury: A Popular Explanation of*  
 27 *the Leading Topics in the Law of the Land* 333 (1880)).

28 <sup>55</sup> *Heller*, 554 U.S. at 619 (quoting J. Ordronaux, *Constitutional Legislation in the United*  
*States* 241-242 (1891)).

<sup>56</sup> *McDonald*, 561 U.S. at 926-27.

1 *Heller* specifically considered “whether a District of Columbia prohibition on the  
 2 possession of *usable* handguns in the home violates the Second Amendment to the  
 3 Constitution.”<sup>57</sup> And “District of Columbia law also require[d] residents to keep their  
 4 lawfully owned firearms, such as registered long guns, ‘unloaded and disassembled or  
 5 bound by a trigger lock or similar device’ unless they are located in a place of business or  
 6 are being used for lawful recreational activities.”<sup>58</sup> In the end, the Supreme Court struck  
 7 down both parts of the statute. “In sum, we hold that the District’s ban on handgun  
 8 possession in the home violates the Second Amendment, as does its prohibition against  
 9 rendering any lawful firearm in the home operable for the purpose of immediate self-  
 10 defense.”<sup>59</sup> While reaching its conclusion, the Supreme Court considered what types of  
 11 firearms were, and were not, protected by the Constitution. Highlighting the central  
 12 tenant of the Second Amendment, the Supreme Court wrote,

13 We may as well consider at this point (for we will have to  
 14 consider eventually) what types of weapons *Miller* permits.  
 15 Read in isolation, *Miller*’s phrase “part of ordinary military  
 16 equipment” could mean that only those weapons useful in  
 17 warfare are protected. That would be a startling reading of the  
 18 opinion, since it would mean that the National Firearms Act’s  
 19 restrictions on machineguns (not challenged in *Miller*) might be  
 20 unconstitutional, machineguns being useful in warfare in 1939.  
 21 We think that *Miller*’s “ordinary military equipment” language  
 22 must be read in tandem with what comes after: “Ordinarily  
 23 when called for militia service able-bodied men were expected  
 24 to appear bearing arms supplied by themselves and of the kind  
 25 in common use at the time.” The traditional militia was formed  
 26 from a pool of men bringing arms “in common use at the time”  
 27 for lawful purposes like self-defense. “In the colonial and  
 28 revolutionary war era, small-arms weapons<sup>60</sup> used by

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25 <sup>57</sup> *Heller*, 554 U.S. at 573 (emphasis added).

26 <sup>58</sup> *Heller*, 554 U.S. at 575. The Court declared both aspects of the statute to be in  
 27 violation of the Second Amendment.

28 <sup>59</sup> *Heller*, 554 U.S. at 635.

<sup>60</sup> Not cannons or mortars.

1 militiamen and weapons used in defense of person and home  
 2 were one and the same.” . . . We therefore read *Miller* to say  
 3 only that the Second Amendment does not protect those  
 4 weapons not typically possessed by law-abiding citizens for  
 lawful purposes.<sup>61</sup>

5 Since it was “the conception of the militia at the time of the Second Amendment’s  
 6 ratification [that] the body of all citizens capable of military service, [citizens] would  
 7 bring the sorts of lawful weapons that they possessed at home to militia duty,”<sup>62</sup> the right  
 8 to keep and carry arms means “the sorts of weapons protected were those ‘in common  
 9 use at the time.’”<sup>63</sup>

#### 10 **A. Magazines Are Protected “Arms”**

11 The State argues that larger capacity magazines are not “arms.” First, the State  
 12 argues that magazines are not essential to the use of firearms and consequently would  
 13 have been thought of as accessories. But magazines are “integral components to vast  
 14 categories of guns.” *Fyock v. City of Sunnyvale*, 25 F.Supp.3d 1267, 1276 (N.D. Cal.  
 15 2014), *aff’d sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015). “Most pistols  
 16 are manufactured with magazines holding ten to seventeen rounds, and many popular  
 17 rifles are manufactured with magazines holding twenty or thirty rounds.” *Kolbe v.*  
 18 *Hogan*, 849 F.3d 114, 129 (4th Cir. 2017) (*en banc*). While the Second Amendment does  
 19 not explicitly mention ammunition or magazines supplying ammunition, “without bullets,  
 20 the right to bear arms would be meaningless.”<sup>64</sup> This is because the right to keep firearms  
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 25 <sup>61</sup> *Heller*, 554 U.S. at 624-25 (citations omitted). If it existed at the time and were in  
 26 common use, as it is today, would a militia member bring a firearm with a magazine that  
 holds more than 10 rounds? The answer is, yes, of course.

27 <sup>62</sup> *Heller*, 554 U.S. at 627.

28 <sup>63</sup> *Heller*, 554 U.S. at 627 citation omitted).

<sup>64</sup> *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)



1 for protection implies a corresponding right to obtain the bullets necessary to use them.

2 “The possession of arms also implied the possession of ammunition.”<sup>65</sup>

3 By extension, “arms” includes the magazine component necessary to supply the  
4 bullet into the chamber of the gun. “[O]ur case law supports the conclusion that there  
5 must also be some corollary, albeit not unfettered, right to possess the magazines  
6 necessary to render those firearms operable.”<sup>66</sup> “It is hard to imagine something more  
7 closely correlated to the right to use a firearm in self-defense than the ability to  
8 effectively load ammunition into the firearm.”<sup>67</sup>

9 Put more broadly, “the Second Amendment protects ancillary rights necessary to  
10 the realization of the core right to possess a firearm for self-defense.”<sup>68</sup> Consequently,  
11 whether thought of as a firearm able to fire a certain number of rounds because of its  
12 inserted magazine, or as a separate ammunition feeding component, magazines are usable  
13 “arms” within the meaning of the Second Amendment. As the Third Circuit Court of  
14 Appeals found, “[w]e therefore must first determine whether the regulated item is an arm  
15 under the Second Amendment. The law challenged here regulates magazines, and so the  
16 question is whether a magazine is an arm under the Second Amendment. The answer is  
17 yes.”<sup>69</sup>

18 Proffering two subsidiary arguments, the State says: (1) a magazine of some size  
19 may be necessary, but a magazine larger than 10 rounds is not necessary to operate a  
20 firearm and thus a larger magazine is not a protected “arm”; and (2) statistically people  
21 rarely fire more than 10 rounds in self-defense so it can be said that a magazine larger  
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25 <sup>65</sup> *United States v. Miller*, 307 U.S. 174, 180 (1939).

26 <sup>66</sup> *Fyock v. Sunnyvale*, 779 F.3d 991, 998 (9th Cir. 2015)

27 <sup>67</sup> *Barnett v. Raoul*, 2023 U.S. Dist. LEXIS 74756, \*26 (S.D. Ill. Apr. 28, 2023).

28 <sup>68</sup> *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017).

<sup>69</sup> *Ass’n of N.J. Rifle & Pistol Clubs v. Att’y Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018).



1 than 10 rounds is rarely *used* for self-defense, and if a larger magazine is not commonly  
2 *used* for self-defense then it is not a protected “arm.”

3 For the first argument, the State claims that if a standard 17-round magazine is  
4 detached from a standard Glock 17 pistol, the 17-round magazine is no longer a weapon  
5 (by itself) and because the Glock 17 pistol could still function with a substitute 10-round  
6 magazine, then the 17-round standard Glock magazine does not come within the  
7 definition of “arms” that the Second Amendment protects.<sup>70</sup> In contrast, according to the  
8 State, a magazine holding 10 or less may qualify as a protected “arm,” but a magazine  
9 able to hold 11 or more is not a protected “arm.” What the State seems to be really  
10 saying is that a magazine may be a protected arm, but only the State has the right to pick  
11 the number of rounds a citizen may have in his gun.

12 This Court disagrees. The Supreme Court has not described protected arms in  
13 subdivided categories. When *Heller* found handguns were protected, it did not  
14 distinguish between semiautomatic pistols and revolvers. *Heller* did not classify  
15 protected handguns according to the number of rounds one could hold or the caliber of  
16 the ammunition that could be fired. It did not suggest that typically possessed arms could  
17 be subcategorized and subjected to judicial ad hoc constitutional determinations.  
18 Whether thought of holistically as a “handgun” irrespective of magazine size as *Heller*  
19 does, or as an entirely separate attachment, both firearms and their magazines (of all  
20 typical sizes) are “arms” covered by the text of the Second Amendment. “This is not  
21 even a close call.”<sup>71</sup> As this Court has said before, “[n]either magazines, nor rounds of  
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23 <sup>70</sup> Of course, the argument admits, *sub silentio*, that some magazines are necessary to  
24 operate a gun. The State says: “To be sure, some type of magazine is essential to the use  
25 of many handguns. But there is no evidence in this record . . . that a magazine capable of  
26 firing more than 10 rounds without reloading is necessary to the function of any modern  
firearm.” Def’s Suppl. Br., Dkt. 118 at n.10.

27 <sup>71</sup> *Barnett v. Raoul*, No. 3:23-cv-00209-SPM, 2023 U.S. Dist. LEXIS 74756, at \*26–27  
28 (S.D. Ill. Apr. 28, 2023); *Hanson v. District of Columbia*, Civil Action No. 22-2256  
(RC), 2023 U.S. Dist. LEXIS 68782, at \*17 (D.D.C. Apr. 20, 2023) (“At least three

ammunition, nor triggers, nor barrels are specifically mentioned in the Second Amendment . . . But without a right to keep and bear triggers, or barrels, or ammunition and the magazines that hold ammunition, the Second Amendment right would be meaningless.”<sup>72</sup> Using reasoning that is still persuasive, the Ninth Circuit agreed, explaining “[p]ut simply, a regulation cannot permissibly ban a protected firearm’s components critical to its operation.” More recently, counsel for California’s Governor in a related fee-shifting case agreed while pointing out that “[t]he large-capacity magazines ban appears in the Penal Code’s title on ‘Firearms,’” and “a restriction on the ammunition that may be used in a firearm is a restriction on firearms.”<sup>73</sup> Leaving no doubt, even the (vacated) Ninth Circuit’s *en banc* decision assumed that § 32310 implicates the Second Amendment.<sup>74</sup>

Relatedly, the State argues that it is only restricting a firearm component or an accessory.<sup>75</sup> “LCMs are not weapons in themselves,” says the State, “nor are they

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Courts of Appeals have concluded that LCMs are “arms” within the meaning of the Second Amendment.”); *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, Civil Action No. 22-951-RGA, 2023 U.S. Dist. LEXIS 51322, at \*19 (D. Del. Mar. 27, 2023); *contra, Ocean State Tactical, LLC v. Rhode Island*, No. 22-cv-246 JJM-PAS, 2022 U.S. Dist. LEXIS 227097, at \*33–34 (D.R.I. Dec. 14, 2022); *Or. Firearms Fed’n, Inc. v. Brown*, No. 2:22-cv-01815-IM, 2022 U.S. Dist. LEXIS 219391, at \*23–25 (D. Or. Dec. 6, 2022).

<sup>72</sup> *Duncan*, 366 F. Supp. 3d at 1142–43 (citing *Fyock v. City of Sunnyvale*, 779 F.3d 991, 998 (9th Cir. 2015); *Teixeira v. Cty. Of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (*en banc*); *Ass’n of N.J. Rifle & Pistol Clubs v. A.G. N.J.*, 910 F.3d 106, 116 (3d Cir. 2018).

<sup>73</sup> *Miller v. Bonta*, 22cv1446-BEN (JLB), Intervenor-Def’s Suppl. Br., Dkt. 35, at 14.

<sup>74</sup> *Duncan*, 19 F.4th at 1103, *cert. granted, judgment vacated*, 213 L. Ed. 2d 1109, 142 S. Ct. 2895 (2022).

<sup>75</sup> Instead of isolating the magazine from the gun, the better understanding is to consider the magazine as part of the gun. There is a federal law analogue leading to the conclusion that a magazine is correctly regarded as a component part of a gun. The Arms Control Export Act criminalizes the unlicensed export of firearms and their components. 22 U.S.C. § 2778(b). Firearm magazines come within the Act because “a magazine is ‘useful’ only when used in conjunction with that end-item [a rifle]: its sole purpose is to load cartridges into the breech so that they can be fired . . . .”<sup>75</sup> In this view, the

1 necessary to operate any firearm for self-defense.” California residents who purchased  
2 new pistols in the last decade are probably surprised to hear that magazines are not  
3 necessary to operate a pistol. After all, another state law known as the Unsafe Handgun  
4 Act requires new semiautomatic pistols to have an integrated magazine-disconnect  
5 mechanism in order to be sold to the public.<sup>76</sup>

6 A magazine-disconnect mechanism prevents a pistol from firing at all, even if one  
7 round is left loaded in the chamber, if the magazine is not inserted into the pistol. The  
8 state-mandated magazine-disconnect mechanism thus prevents the operation of the  
9 firearm without its magazine.<sup>77</sup> While rifles are not required to have a magazine-  
10 disconnect mechanism, the State must concede that at least for semiautomatic handguns  
11 the State deems “not unsafe,” firearms for self-defense will not function without a  
12 magazine.<sup>78</sup> Modern magazines, submits the State, are more like founding-era cartridge  
13 boxes or “ancillary equipment associated with soldiering” that were not strictly necessary  
14 to fire a gun. Today, however, as pointed out above, some semiautomatic firearms will  
15 not function at all without a magazine, while others can fire no more than one round. As  
16  
17

18  
19 magazine is a necessary component part of a gun which, in turn, would obviously fall  
20 under the text of the Second Amendment protection of “arms.”

21 <sup>76</sup> “California’s Unsafe Handgun Act (the ‘UHA’) seeks to prevent accidental discharges  
22 by requiring handguns to have particular safety features . . . [t]he UHA requires certain  
23 handguns to have a magazine disconnect mechanism (“MDM”), which prevents a  
24 handgun from being fired if the magazine is not fully inserted.” *Boland v. Bonta*, No.  
25 SACV2201421CJCADSX, 2023 WL 2588565, at \*1 (C.D. Cal. Mar. 20, 2023) (citing  
26 Cal. Penal Code §§ 16900, 31910(b)(5)).

27 <sup>77</sup> Semiautomatic pistols elsewhere in the nation usually do not have a magazine-  
28 disconnect mechanism so a pistol can still fire one chambered round without its  
magazine. Of course, one need not go too far out on a limb to say that a semi-automatic  
pistol that can fire only 1-round is not the sort of self-defense weapon most people would  
choose.

<sup>78</sup> To be precise, revolvers are handguns that do not require a magazine-disconnect  
mechanism, but that is because a revolver does not have a detachable magazine.

1 such, a magazine is an essential component without which a semiautomatic firearm is  
2 useless for self-defense. Therefore, a magazine falls within the meaning of “arms.”<sup>79</sup>

3 **B. LCMs Are Used for Self-Defense**

4 Notwithstanding that the Second Amendment protects the right to “keep and bear,”  
5 the State’s more troubling argument is that magazines holding more than 10 rounds are  
6 not being *used* for self-defense. By “used,” the State means actually fired. The State  
7 asserts, “there is no evidence that LCMs are frequently used in self-defense.”  
8 Continuing, the State asserts, “[t]o the contrary, the record reflects that it is exceedingly  
9 rare for an individual, in a self-defense situation, to fire more than ten rounds.” But  
10 without conceding the accuracy of the State’s position, infrequent use or “exceedingly  
11 rare” is not the same as *never*. To support the State’s argument, it relies on a  
12 statistician’s conclusion that an average of only 2.2 rounds are fired in an average self-  
13 defense situation. Because more than 10 rounds in the average situation are not being  
14 fired for self-defense, the argument goes, magazines holding more than 10 rounds are not  
15 *used* or needed for self-defense. And because the Second Amendment protects  
16 (according to the State) only those arms commonly “used” for self-defense, the State says  
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19 <sup>79</sup> See e.g., *Hanson v. D.C.*, No. CV 22-2256 (RC), 2023 WL 3019777, at \*7 (D.D.C.  
20 Apr. 20, 2023) (“The District’s logic, by contrast, would allow it to ban *all* magazines  
21 (not just LCMs) — a result even the District does not endorse here — because a firearm  
22 technically does not require *any* magazine to operate; one could simply fire the single  
23 bullet in the firearm’s chamber. The Court will therefore follow the persuasive reasoning  
24 of *ANJRPC*, *Kolbe*, and *Duncan* in concluding that LCMs are “arms” within the meaning  
25 of the Second Amendment.”); see also *Barnett v. Raoul*, No. 3:23-CV-00141-SPM, 2023  
26 WL 3160285, at \*8 (S.D. Ill. Apr. 28, 2023) (“Defendants’ argument is not persuasive.  
27 The Seventh Circuit has recognized the Second Amendment as extending to “corollaries  
28 to the meaningful exercise of the core right to possess firearms for self-defense.” It is  
hard to imagine something more closely correlated to the right to use a firearm in self-  
defense than the ability to effectively load ammunition into the firearm.”).

larger capacity magazines are not commonly “used,” and therefore they are not protected arms.<sup>80</sup>

It is a remarkable reading of *Heller*, *McDonald*, *Caetano*, and *Bruen* to say that if a gun is not fired more than 10 times in self-defense then the gun’s larger magazine is not being “used” in self-defense, and if not “used” in self-defense, then not protected by the Second Amendment. Yet, this is the State’s theme.

In this Court’s view, it is a crabbed reading of the Supreme Court’s Second Amendment decisions and not relevant to the text, history and tradition test. The Supreme Court uses several descriptive phrases to describe the kinds of firearms that are protected by the Constitution. But common to all is the notion that to be protected, an arm needs only to be regarded as *typically* possessed or carried, or *commonly* kept, by citizens to be ready for use, if needed. The Supreme Court has not said that the actual firing of a gun is any part of the test. Indeed, the Second Amendment does not say that the right of the People to keep only such firearms as they actually shoot, shall not be infringed.

*McDonald* begins, “[t]wo years ago, in *District of Columbia v. Heller*, we held that the Second Amendment protects the right to keep and bear arms *for the purpose of self-defense*, and we struck down a District of Columbia law that banned the possession of handguns in the home.”<sup>81</sup> What mattered is the purpose for which handguns were possessed, not necessarily the actual use.

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<sup>80</sup> A similar argument was made by the State in *N.A. for Gun Rights v. Lamont*, Case No. 22-1118 (JBA), 2023 U.S. Dist. LEXIS 134880, \*40 (D. Conn. Aug. 3, 2023) (“Defendants maintain that after *Bruen*, Plaintiffs must show not only that the weapons and accoutrements are commonly owned, but they are commonly possessed and used *for self-defense* base on *Bruen*’s repeated use of the phrase ‘common use’ for self-defense.”) (emphasis added), and in *Oregon Firearms Federation v. Kotek*, Case No. 22cv1815-IM, \*67 (D. Ore. July 14, 2023) (“Defendants ... argue for an interpretation of ‘use’ that includes some objective metric of an LCM’s actual use in self-defense.”).

<sup>81</sup> 561 U.S. at 749-50 (citation omitted) (emphasis added).

1 The State puts its weight on the words “use,” “uses,” and “used.” One problem  
2 with the State’s view is that it treats the Supreme Court’s opinion language like the  
3 language of a statute. That is a mistake. “Because ‘opinions, unlike statutes, are not  
4 usually written with the knowledge or expectation that each and every word may be the  
5 subject of searching analysis,’ we do not follow statutory canons of construction with  
6 their focus on ‘textual precision’ when interpreting judicial opinions.”<sup>82</sup>

7 Under the State’s reading, a homeowner who displays a handgun with a 17-round  
8 magazine to scare away home invaders, has not “used” the 17-round magazine. Under  
9 the State’s reading, even a citizen who fires his semiautomatic firearm 10 times or less to  
10 defend himself, has not *used* his 17-round magazine in self-defense. Admittedly, one can  
11 find different meanings of the term “use.” For example, in the context of a criminal  
12 statute, the Supreme Court acknowledged “use” offers different possible meanings.  
13 “[T]he word ‘use’ poses some interpretational difficulties because of the different  
14 meanings attributable to it. Consider the paradoxical statement: ‘I *use* a gun to protect  
15 my house, but I’ve never had to *use* it.’”<sup>83</sup> Consequently, context is important, whether  
16 interpreting a statute or understanding an opinion.<sup>84</sup>

17 So, considering the words “use” or “used” in context, the State’s notion is far  
18 removed from the meaning indicated by the Supreme Court. *Heller* considered merely  
19 the simple possession of *usable* handguns in the home. Focusing on the right to possess a  
20 usable arm, *Heller* said, “[w]e consider whether a District of Columbia prohibition on the  
21 possession of *usable* handguns in the home violates the Second Amendment to the  
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25 <sup>82</sup> *Upper Skagit Indian Tribe v. Sauk-Suiattle Indian Tribe*, 66 F.4th 766, 770 (9th Cir.  
26 2023) (citations omitted).

27 <sup>83</sup> *Bailey v. United States*, 516 U.S. 137, 143 (1996) (emphasis in original).

28 <sup>84</sup> *Muscarello v. United States*, 524 U.S. 125, 144 (1998) (“Noting the paradoxical  
statement, ‘I *use* a gun to protect my house, but I’ve never had to *use* it,’ the Court in  
*Bailey* emphasized the importance of context.”)



1 Constitution.”<sup>85</sup> Actual firing of a handgun in the District was irrelevant. Statistical  
 2 surveys of shots fired in self-defense were not determinative – they were not even  
 3 mentioned. *Heller* used a simpler test. Constitutional protection is afforded to weapons  
 4 “typically possessed by law-abiding citizens for lawful purposes,” focusing on typicality  
 5 and possession rather than frequency of firing.<sup>86</sup>

6 *McDonald* says “the right was also valued because the possession of firearms was  
 7 thought to be essential for self-defense.” *McDonald*’s focus is on possession.<sup>87</sup> And  
 8 *McDonald* says the right applies “to handguns because they are ‘the most preferred  
 9 firearm in the nation to ‘keep’ and use for protection of one’s home and family,”  
 10 focusing on a national subjective preference for handguns.<sup>88</sup> There was no effort by the  
 11 Supreme Court to condition the constitutional right upon some objective metric of actual  
 12 handgun firing in self-defense.

13 *Bruen* says, “[t]he Second Amendment guaranteed to ‘all Americans’ the right to  
 14 bear commonly used arms in public.” *Bruen* appears to focus on commonality.<sup>89</sup> *Bruen*  
 15 injects some ambiguity with the following phraseology, “the Second Amendment  
 16 protects the possession and use of weapons that are ‘in common use at the time.’”<sup>90</sup>  
 17 *Bruen* noted that in that case, no party disputed that handguns are weapons “in common  
 18 use” today for self-defense, but did not say what it meant by “use.”<sup>91</sup> So, what does the  
 19 Supreme Court mean by its phrase “in common use?” Is the focus placed on a weapon’s  
 20 commonality in society or the frequency of a weapon’s firing? *Bruen* answers the  
 21 question elsewhere in its opinion. Commonality is the focus. Consider the following  
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23 <sup>85</sup> 554 U.S. at 573 (emphasis added).

24 <sup>86</sup> 554 U.S. at 625; *see also* at 720 (Breyer, J., dissenting) (describing the majority test in  
 25 the same terms).

26 <sup>87</sup> 561 U.S. at 787.

27 <sup>88</sup> *Id.* at 767 (citations omitted).

28 <sup>89</sup> 142 S. Ct. at 2156 (citing *Heller*, 554 U.S. at 581).

<sup>90</sup> *Id.* at 2128 (citing *Heller*, 554 U.S. at 627).

<sup>91</sup> *Id.* at 2134.

1 sentence from *Bruen*: “Drawing from this historical tradition, we explained there that the  
 2 Second Amendment protects only the carrying of weapons that are those ‘in common use  
 3 at the time,’ *as opposed to those that ‘are highly unusual in society at large.’*”<sup>92</sup> Or  
 4 consider this sentence from *Bruen*’s footnote 13: “Even assuming that pocket pistols  
 5 were, as East Jersey in 1686 deemed them, ‘unusual or unlawful,’ it appears that they  
 6 were commonly used at least by the founding.”<sup>93</sup> *Bruen* contrasts common pistols against  
 7 unusual pistols. The focus remains on commonality, not the frequency of actual  
 8 discharge in self-defense scenarios. Put simply, Second Amendment protection envelops  
 9 weapons commonly or typically subjectively chosen by citizens to keep in case of  
 10 confrontation.

11 From *Bruen*, it is evident that the Supreme Court’s focus is on whether a weapon is  
 12 common (or unusual) amongst the citizenry. This, in turn, requires some sort of  
 13 generalized numerical estimation of citizen ownership or gauge of present popularity. In  
 14 *Caetano*, the concurring Justices explained that, “[t]he more relevant statistic is that  
 15 ‘hundreds of thousands of Tasers and stun guns have been sold to private citizens,’ who it  
 16 appears may lawfully possess them in 45 States.”<sup>94</sup> That Ms. Caetano did not actually  
 17 energize and fire her stun gun made no difference to the Supreme Court. In her case, she  
 18 did no more than display the weapon. “She stood her ground [and] displayed the stun  
 19 gun.”<sup>95</sup> Absent from the opinion is any discussion about the average number of times a  
 20 stun gun is energized in an average self-defense scenario. Absent from the opinion is any  
 21 objective metric counting the frequency with which stun guns have been fired. The  
 22

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23  
 24 <sup>92</sup> *Id.* at 2143 (emphasis added).

25 <sup>93</sup> *Id.* at n.13 (citation omitted).

26 <sup>94</sup> 577 U.S. at 420 (citations omitted) (“While less popular than handguns, stun guns are  
 27 widely owned and accepted as a legitimate means of self-defense across the country.  
 28 Massachusetts’ categorical ban of such weapons therefore violates the Second  
 Amendment.”).

<sup>95</sup> *Id.* at 413, (Alito, J., concurring).



1 measure of constitutional protection was that the stun gun was “used” in the sense that  
2 stun guns are widely *owned* to satisfy a subjective need for protection and that the  
3 number in existence was in the hundreds of thousands.

4 Applying the same measure to magazines, because it is the case that magazines  
5 holding more than 10 rounds are owned and possessed by millions of Americans to meet  
6 a subjective need for self-defense, this fact alone entitles such magazines to Second  
7 Amendment protection. When a magazine is commonly owned by Americans with the  
8 subjective intention of using it for self-defense, it is enough to say that it is in common  
9 use (or typically used) for self-defense, as the Supreme Court employs the phrase in its  
10 opinions.<sup>96</sup>

11 Probably the vast majority of Americans that own magazines of 11 rounds or more  
12 keep them and use them for self-defense in the same way that a driver puts on and uses a  
13 seat belt in the case of a collision. Though collisions rarely happen, the seat belt is used  
14 for protection and to be ready for the unexpected collision. A reserve canopy is being  
15 used on a parachute jump, although it is not deployed, in case the main parachute fails. A  
16 cell phone in one’s pocket is being used when waiting for a telephone call or in the event  
17 one needs to make a call. In the same way, a firearm kept on one’s nightstand is used for  
18 self-defense even when the night is quiet. It is kept and used in case of confrontation. A  
19 person may happily live a lifetime without needing to fire their gun in self-defense. But  
20 that is not to say that such a person does not *use* their gun for self-defense when he or she  
21 keeps it under the bed with a hope and a prayer that it never has to be fired.

22 In 2016, an 81-year old Uniontown, Pennsylvania man and his elderly sister were  
23 at home when at night an intruder broke in. In the ensuing struggle, the older man fired  
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25  
26 <sup>96</sup> At the margin, there may be a weapon that is commonly owned that is not commonly  
27 used for self-defense. One could imagine perhaps a reproduction of an 18<sup>th</sup> century  
28 flintlock or a World War II German Luger being commonly owned, but used only as  
curios or museum pieces.

1 one shot from his gun at his attacker. The victim said he had never before fired his gun  
2 and that it had been sitting on his nightstand for thirty years.<sup>97</sup> California would say that  
3 the victim did not *use* his gun for self-defense on any day of those preceding thirty years.  
4 And if his gun had a magazine with eleven or more rounds in it (the news report does not  
5 say), California would argue that the victim never did *use* his large capacity magazine in  
6 self-defense. This Court would say that the victim *used* his gun every night of the thirty  
7 years he subjectively kept it on his bedroom nightstand in case of confrontation,  
8 including the night of the burglary. And if his gun had been equipped with a large  
9 capacity magazine, it could correctly be said that he also *used* the large capacity  
10 magazine for self-defense every night of the thirty years he subjectively kept it on his  
11 bedroom nightstand in case of confrontation.

### 12 **C. The Invention of the 2.2 Shot Average**

13 Without agreeing that when the Supreme Court discusses firearms “in common  
14 use” it means commonly fired, even if it did, the State’s statistic is suspect. California  
15 relies entirely on the opinion of its statistician for the hypothesis that defenders fire an  
16 average of only 2.2 shots in cases of confrontation.

17 Where does the 2.2 shot average originate? There is no national or state  
18 government data report on shots fired in self-defense events. There is no public  
19 government database. One would expect to see investigatory police reports as the most  
20 likely source to accurately capture data on shots fired or number of shell casings found,  
21 although not every use of a gun in self-defense is reported to the police. As between the  
22 two sides, while in the better position to collect and produce such reports, the State’s  
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26 <sup>97</sup> *81-year-old fatally shoots home invasion suspect, says gun had never been used in 30*  
27 *years*, WXPI-TV 11 News (Nov. 4, 2016), [https://www.wpxi.com/news/81-year-old-](https://www.wpxi.com/news/81-year-old-fatally-shoots-home-invasion-suspect-says-gun-had-never-been-used-in-30-years/464100332/)  
28 [fatally-shoots-home-invasion-suspect-says-gun-had-never-been-used-in-30-](https://www.wpxi.com/news/81-year-old-fatally-shoots-home-invasion-suspect-says-gun-had-never-been-used-in-30-years/464100332/)  
[years/464100332/ \[https://perma.cc/FRP6-MA9P\].](https://perma.cc/FRP6-MA9P)

1 Attorney General has not provided a single police report to the Court or to his own  
2 expert.<sup>98</sup>

3 Without investigatory reports, the State's expert turns to anecdotal statements,  
4 often from bystanders, reported in news media, and selectively studied. She indicates she  
5 conducted two studies.<sup>99</sup> Based on these two studies of newspaper stories, she opines that  
6 it is statistically rare for a person to fire more than 10 rounds in self-defense and that only  
7 2.2 shots are fired on average.<sup>100</sup> Unfortunately, her opinion lacks classic indicia of  
8 reliability and her two studies cannot be reproduced and are not peer-reviewed.  
9 "Reliability and validity are two aspects of accuracy in measurement. In statistics,  
10 reliability refers to reproducibility of results."<sup>101</sup> Her studies cannot be tested because she  
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12  
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14 <sup>98</sup> Allen asked the State for police reports, but she did not receive them. *See* Transcript,  
Preliminary Injunction Hearing, 10/19/20, 153:1-16:

15 "THE COURT: Let me ask you a question. Did you ever ask, for example,  
16 [Deputy Attorney General] Mr. Echeverria if he would get you the law enforcement  
17 reports of home defense shootings that may have occurred where the homeowner or the  
person at home fired shots at someone that was intruding?

18 THE WITNESS: Yes. So I did ask both from the State of California as well as  
19 from a number of other states that I have worked for, I have asked for data on incidents of  
20 exactly that, or whether there was a broader set of data that they had that I could then  
review.

21 THE COURT: And did you get that from the State of California?

22 THE WITNESS: I did not. It was my understanding that the State of California  
23 did not have that data or did not have that in a way that it could be reviewed. That that is  
not -- that is not a type of data that is collected."

24 <sup>99</sup> Lucy Allen Supp. Decl. Dkt 118-1.

25 <sup>100</sup> Allen Supp. Decl. Dkt 118-1, at ¶10. Of course, though one may assume that "LCMs"  
26 are only used .3% of the time, for the unfortunate homeowner who makes up part of the  
27 .3%, it is 100% of his time.

28 <sup>101</sup> Federal Judicial Center, *Reference Manual on Scientific Evidence* (3d ed.), 211  
Reference Guide on Statistics, 2011 WL 7724256, 10 and n.37 ("Daubert v. Merrell  
Dow Pharms., Inc., 509 U.S. 579, 590 n.9 (1993), for example, distinguishes "evidentiary  
reliability" from reliability in the technical sense of giving consistent results. We use  
"reliability" to denote the latter.).

1 has not disclosed her data. Her studies have not been replicated. In fact, the formula  
2 used to select 200 news stories for the Factiva study is incomprehensible.

3 For one study, Allen says she conducted a search of stories published in the NRA  
4 Institute for Legislative Action magazine (known as the Armed Citizen Database)  
5 between 2011 and 2017. There is no explanation for the choice to use 2011 for the  
6 beginning. After all, the collection of news stories goes back to 1958. Elsewhere in her  
7 declaration she studies mass shooting events but for that chooses a much longer time  
8 period reaching back to 1982. Likewise, there is no explanation for not updating the  
9 study after 2017.

10 However it is that they were chosen, some 736 incidents in the Armed Citizen  
11 Database were said to be analyzed and the number of shots tabulated, but details are  
12 completely absent. Allen does not list the 736 stories. Nor does she reveal how she  
13 assigned the number of shots fired in self-defense when the news accounts use phrases  
14 like “the intruder was shot” but no number of shots was reported, or “there was an  
15 exchange of gunfire,” or “multiple rounds were fired.” She includes in her 2.2 average of  
16 defensive shots fired, incidents where no shots were fired.<sup>102</sup> One would expect the  
17 impact of Allen’s choice to include a zero for a no-shot event to be significant because  
18 (even using her number) 32.1% of the events in the home in California were no-shot  
19 events.<sup>103</sup> She also reported no incidents in California where more than 10 shots were  
20 fired in self-defense among the stories she reviewed. It seems obvious that in a state  
21 where magazines holding more than 10 rounds have been illegal to buy or sell for twenty  
22 years, law-abiding citizens are using the smaller magazines that the law requires for self-  
23 defense. Absent from the expert opinion is a statistic reporting the average number of  
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27 <sup>102</sup> Allen Supp. Decl. Dkt 118-1 n.10 (“[T]he average includes instances when no shots  
28 are fired.”).

<sup>103</sup> Allen Supp. Decl. Dkt 118-1 at ¶ 12 (table).

1 shots fired by criminals. Also absent is the number of intruders or whether the  
2 homeowner was able to escape unharmed.

3 In another example, it is not evident from the study how she counted the number of  
4 shots fired for one story in the collection where a homeowner “fired back” and three  
5 intruders suffered eight gunshot wounds. Considering most victims miss some of their  
6 shots, one would expect in defending against three attackers that more than eight shots  
7 were fired in self-defense. Instead, all that the Court is told is:

8 When the exact number of shots fired was not specified, we  
9 used the average for the most relevant incidents with [a] known  
10 number of shots. For example, if the story stated that “shots  
11 were fired” this would indicate that at least two shots were fired  
12 and thus we used the average number of shots fired in all  
of shots was specified.<sup>104</sup>

13 She does not reveal the imputed number substitute value that she used where the exact  
14 number of shots fired was not specified, so her result cannot be reproduced.

15 Interestingly, substituting an imputed average value for all of the times the number of  
16 shots fired is unknown, tends to bring the overall average of shots fired down towards  
17 2.2. For example if there are ten incidents of self-defense where nine times the victim  
18 fired two shots and one time the victim fired thirteen shots, the average number of shots  
19 fired would be 3.1 but the percentage of times more than ten shots were needed for self-  
20 defense would be 10%.

21 For a second study, Allen says she conducted a word search of a news aggregator  
22 called Factiva. Factiva is a commercial database behind a paywall to which the Court  
23 and the public have no access. Even if one did have access to the Factiva database, one  
24 could not repeat her study. Allen’s methodology for the Factiva study is  
25 incomprehensible. For the Factiva database of 70 million news stories, her word search  
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28 <sup>104</sup> Allen Supp. Decl. Dkt 118-1 n.8.

1 returned 35,000 stories.<sup>105</sup> From there she somehow selected 200 stories of defensive gun  
2 use in the home and set out to analyze the events.<sup>106</sup> As with the Armed Citizen study,  
3 Allen does not provide a list of the 200 stories she analyzed. Compare that to the long,  
4 detailed list of 179 mass shooting stories she includes in the second part of her  
5 declaration. For the Factiva study, there is no way to check her analysis or her math.  
6 And once again she includes in the averages those events where no shots were fired,  
7 bringing the overall average down.<sup>107</sup>

8 Had a table of the stories she and her team analyzed been supplied, it would  
9 certainly reveal important information. For example, this Court randomly selected two  
10 pages from Allen's mass shooting table: pages 10 and 14. From looking at these two  
11 pages (assuming that the sources for the reports were accurate and unbiased) the Court is  
12 able to make statistical observations, including the observation that the number of shots  
13 fired were unknown 69.04% of the time. Without a similar table for the NRA or Factiva  
14 studies, this Court cannot ascertain the number of shots fired in each incident, the number  
15 of times a homeowner possessed a LCM, the number of times the number of shots fired  
16 were unknown, whether the homeowner was unharmed, or the number of intruders.

17 Allen's 2.2 shot average is suspect for larger reasons. The whole statistical  
18 exercise is based on hearsay (anecdotes) upon hearsay news reporting, rather than police  
19 investigatory reports. A database of news articles lacks the usual indicia of accuracy and  
20 reliability of admissible evidence. According to fifteen national polls conducted by non-  
21 law enforcement agencies, there may be from 760,000 defensive handgun uses to  
22

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23  
24 <sup>105</sup> Exh. A at ¶18.

25 <sup>106</sup> *Id.* at ¶ 19.

26 <sup>107</sup> Allen Depo. Jan. 12, 2021 at 119:10-18 ("Q. So numerically speaking, inclusion of  
27 incidents where the number is zero would tend to drag the average number of shots fired  
28 down; would you tend to agree with that? A. So it includes those with zero. That's  
correct. Q. Okay. And have you ever looked at the average number of shots fired when  
shots were fired? A. No.").

1 3,600,000 defensive uses each year.<sup>108</sup> Compared to the comprehensive details given for  
 2 her study on mass shooting events, the NRA and Factiva studies are curiously lacking in  
 3 depth and breadth and causes the Court to deeply discount her opinion.

4 The Court is aware of its obligation to act as a gatekeeper to keep out junk science  
 5 where it does not meet the reliability standard of *Daubert v. Merrell Dow*  
 6 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702.<sup>109</sup> In a  
 7 bench trial, the relevancy bar is low and Rule 702 is to be applied with a liberal thrust  
 8 favoring admission.<sup>110</sup> While opinions and evidence may have been deemed admissible,  
 9 in some cases, the evidence has been given very little weight or no weight at all. This is  
 10 the fact finder's role.<sup>111</sup> "Challenges that go to the weight of the evidence are within the  
 11 province of a fact finder . . . ." <sup>112</sup> So, while questionable expert testimony was admitted, it  
 12 has now been weighed in light of all of the evidence.

13 In assessing expert witness opinion, a court looks to see whether the opinion given  
 14 is newly made or whether it grew naturally out of research conducted outside of the  
 15 litigation.<sup>113</sup> Bias may be evident, according to legal authorities, where the expert forms  
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 18 <sup>108</sup> Plaintiffs' Exh. 10-10, John R. Lott, Jr., *More Guns, Less Crime* 3d. (2010), at 12.

19 <sup>109</sup> *See Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir.2014),  
 20 *overruled on other grounds, United States v. Bacon*, 976 F.3d 766 (9th Cir. 2020) (en  
 21 banc) (duty falls squarely upon the district court to act as gatekeeper to exclude junk  
 science).

22 <sup>110</sup> *Messick v. Novartis Pharm. Corp.*, 747 F.3d 1193, 1196 (9th Cir. 2014).

23 <sup>111</sup> *Primiano v. Cook*, 598 F.3d 558, 568 (9th Cir. 2010) (though opinion of doctor is  
 24 admitted, jury may reject the opinion); *see also, e.g., United States v. Vallejo*, 237 F.3d  
 1008, 1021 (9th Cir. 2001) (admissibility of expert opinion different than weight to be  
 accorded).

25 <sup>112</sup> *City of Pomona v. SQM North Am. Corp.*, 750 F.3d 1036, 1044 (9th Cir. 2014).

26 <sup>113</sup> *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995) (after  
 27 remand) ("One very significant fact to be considered is whether the experts are proposing  
 28 to testify about matters growing naturally and directly out of research they have  
 conducted independent of the litigation, or whether they have developed their opinions  
 expressly for purposes of testifying."); *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1422



1 an opinion without peer-reviewed scientific support or before examining sufficient  
 2 data.<sup>114</sup> Bias may also be evident where an expert opinion is formed solely for the  
 3 purposes of litigation. Here, the Court is mindful that, “[f]or scientific evidence to be  
 4 admissible, the proponent must show the assertion is ‘derived by a scientific method,’”  
 5 and “[o]pinion based on ‘unsubstantiated and undocumented information is the antithesis  
 6 of scientifically reliable expert opinion.’ “The court must assess the expert's reasoning or  
 7 methodology, using as appropriate criteria such as testability, publication in peer-  
 8 reviewed literature, known or potential error rate, and general acceptance.”<sup>115</sup> Methods  
 9 and procedures must be followed and undisciplined speculation is not science.<sup>116</sup>

10 “To aid courts in exercising this gatekeeping role, the Supreme Court has  
 11 suggested a non-exclusive and flexible list of factors that a court may consider when  
 12 determining the reliability of expert testimony, including: (1) whether a theory or  
 13 technique can be tested; (2) whether it has been subjected to peer review and publication;  
 14 (3) the known or potential error rate of the theory or technique; and (4) whether the  
 15 theory or technique enjoys general acceptance within the relevant scientific  
 16 community.”<sup>117</sup> Allen’s study relies on unverified, uncorroborated second or third hand  
 17 anecdotal information. Normally, “a witness may testify to a matter only if evidence is  
 18 introduced sufficient to support a finding that the witness has personal knowledge of the  
 19  
 20  
 21  
 22

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23 (9th Cir.1998) (expert's development of opinion expressly for purposes of testifying is a  
 24 significant consideration in evaluating opinion).

25 <sup>114</sup> B. Black & P. Lee, *Expert Evidence* (West 1997), Ch. 4(IV)(B), at 147.

26 <sup>115</sup> *Id.*

27 <sup>116</sup> *Daubert*, 509 U.S. at 589–90. (“The subject of an expert’s testimony must be  
 28 ‘scientific . . . knowledge.’ The adjective ‘scientific’ implies a grounding in the methods  
 and procedures of science. Similarly, the word ‘knowledge’ connotes more than  
 subjective belief or unsupported speculation.”).

<sup>117</sup> *Messick*, 747 F.3d at 1197 (quoting *Daubert*, 509 U.S. at 592–94).



1 matter.”<sup>118</sup> Assuming its relevance in the first instance for *Bruen* purposes, the statistical  
2 analysis has minimal indicia of accuracy or reliability.

3 In the end, Allen opines that an average of 2.2 shots are fired in self-defense gun  
4 scenarios and only .3% of such incidents involve more than 10 shots fired. Yet, even .3%  
5 is a lot in terms of actual times a citizen needs to fire his gun in self-defense. Using the  
6 estimate from the Centers for Disease Control mentioned earlier of 500,000 to 3,000,000  
7 times per year nationally, and extrapolating the .3% where more than 10 shots were fired  
8 (per Allen’s report), would mean defensive gun uses of more than 10 shots happen  
9 between 1,500 and 9,000 times, every year (based on the CDC annual number of  
10 defensive gun uses cited on the website Allen cited and relied on<sup>119</sup>).

11 **D. Magazines Holding More Than 10 Rounds Are Not Dangerous and Unusual**

12 Taking another tack, the State reframes the “dangerous and unusual” test as a  
13 “dangerous *or* unusual” test and then objects that magazines able to hold more than 10  
14 rounds are unusually dangerous. As the Court has stated, all guns and ammunition are  
15 dangerous.<sup>120</sup> However, magazines holding more than 10 rounds are not both “dangerous  
16 and unusual,” which is the Supreme Court’s test. So-called large capacity magazines  
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23 <sup>118</sup> Federal Rule of Evidence 602.

24 <sup>119</sup> In her Supplemental Declaration, at footnote 4, Dkt. 118-1, Allen cites a Heritage  
25 Foundation online visual database:  
26 <https://datavisualizations.heritage.org/firearms/defensive-gun-uses-inthe-us>. If one looks  
27 at the Heritage Foundation description of its visual database research, one would see that  
28 it acknowledges the CDC report that Americans use their firearms defensively between  
500,000 and 3,000,000 million times each year.

<sup>120</sup> *Staples*, 511 U.S. at 611 (“Despite their potential for harm, guns generally can be  
owned in perfect innocence.”).

1 banned in California are commonly-owned by law-abiding citizens across the nation<sup>121</sup>  
 2 and number in the millions.<sup>122</sup>

3 **E. The Most-Useful-for-Military-Service Nostrum**

4 The State argues, and some courts have reasoned, that magazines holding more  
 5 than 10 rounds are “most useful in military service” and therefore, can be banned.<sup>123</sup> The  
 6 Supreme Court said no such thing.<sup>124</sup> *Caetano* addresses this question and says, “*Heller*  
 7 rejected the proposition ‘that only those weapons useful in warfare are protected.’”<sup>125</sup>  
 8 *Heller* was explaining *United States v. Miller*.<sup>126</sup> In *Miller*, the Supreme Court applied a  
 9 reasonable-relationship-to-militia-use test to a short-barreled shotgun, asking whether the  
 10 shotgun would have a reasonable relationship to the preservation or efficiency of a well-  
 11 regulated militia. Finding none, it decided the Second Amendment did not guarantee the  
 12 right to keep that particular firearm.<sup>127</sup> *Miller*’s realm of Second Amendment protection  
 13 encircled a firearm if it was reasonably related to militia use. This “reasonably-related”  
 14 construct received a nod again in *Lewis v. U.S.*,<sup>128</sup> where the Supreme Court sang *Miller*’s

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 17 <sup>121</sup> “It is indisputable in the modern United States that magazines of up to thirty rounds  
 18 for rifles and up to twenty rounds for handguns are standard equipment for many popular  
 19 firearms.” Kopel, *supra*, *The History of Firearm Magazines*, at 874, Declaration of Anna  
 20 M. Barvir in Support of Plfs.’ Suppl. Br., Exh. 39, Dkt. 132-6, at 125.

20 <sup>122</sup> See nn. 28-31, *supra*, and accompanying text.

21 <sup>123</sup> See, e.g., *Hanson v. D.C.*, No. CV 22-2256-RC, 2023 WL 3019777, at \*28–29  
 22 (D.D.C. Apr. 20, 2023) (“LCMs are not covered by the Second Amendment because they  
 23 are most useful in military service.”).

24 <sup>124</sup> See, e.g., *Bevis v. City of Naperville*, No. 22 C 4775, 2023 U.S. Dist. LEXIS 27308, at  
 25 \*22 (N.D. Ill. Feb. 17, 2023) (“Relatedly, the Supreme Court has unequivocally  
 26 dismissed the argument that ‘only those weapons useful in warfare are protected.’ To the  
 27 extent that the Seventh Circuit classified the weapon as either ‘civilian’ or ‘military,’ the  
 28 classification has little relevance.”) (citation omitted).

<sup>125</sup> *Caetano*, 577 U.S. at 412 (quoting *Heller*, 554 U.S. at 624–25).

<sup>126</sup> 307 U.S. 174 (1939)

<sup>127</sup> *Id.* (“Certainly it is not within judicial notice that this weapon is any part of the  
 ordinary military equipment or that its use could contribute to the common defense.”).

<sup>128</sup> 445 U.S. 55, 65 n.8 (1980).

1 refrain, “the Second Amendment guarantees no right to keep and bear a firearm that does  
2 not have ‘some reasonable relationship to the preservation or efficiency of a well  
3 regulated militia.’” There was no undercutting of *Miller* in the *Heller* or *Bruen* decisions.  
4 Rather, *Heller* embraced *Miller* and said “[w]e therefore read *Miller* to say only that the  
5 Second Amendment does not protect those weapons not typically possessed by law-  
6 abiding citizens for lawful purposes, such as short-barreled shotguns. That accords with  
7 the historical understanding of the scope of the right.”<sup>129</sup> And *Bruen* “quoted, explained,  
8 re-affirmed, and then applied” *Miller*.<sup>130</sup> *Heller* took the already expansive zone of  
9 protection for weapons that could be used by the militia and focused on the core use of  
10 firearms for self-defense.

11 In other words, *Heller* made the logical connection between weapons commonly  
12 possessed by law-abiding citizens for lawful purposes that would also be useful, if  
13 necessary, for military purposes, *i.e.*, in the militia. Since *Miller*, the Supreme Court has  
14 enlarged the breadth of firearms protected by the Second Amendment to include  
15 commonly owned firearms useful for the core right of self-defense and other lawful  
16 purposes like hunting, sporting, and target shooting. Until the Supreme Court clearly  
17 says otherwise, commonly owned weapons that are useful for war and are reasonably  
18 related to militia use are also fully protected, so long as they are not useful solely for  
19 military purposes. Firearms with magazines holding more than 10 rounds are such  
20 reasonably-related arms. Even *Miller* understood the Constitution to protect the  
21 possession of ammunition. For the militia system to function, “[t]he possession of arms  
22 also implied the possession of ammunition, and the authorities paid quite as much  
23 attention to the latter as to the former.”<sup>131</sup> All considered, the best reading of “arms”

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25 <sup>129</sup> *Heller*, 554 U.S. at 625.

26 <sup>130</sup> *United States v. Saleem*, No. 3:21-cr-00086-FDW-DSC, 2023 WL 2334417, at \*7  
27 (W.D.N.C. Mar. 2, 2023).

28 <sup>131</sup> *Miller*, 307 U.S. at 180 (quoting *The American Colonies In The 17<sup>th</sup> Century*, Osgood,  
Vol. 1, ch. XIII).

1 includes magazines.<sup>132</sup>

### 2 **III. BRUEN AND THE MAGAZINE CAPACITY LIMIT**

3 Plaintiffs challenge § 32310, which prohibits manufacturing, importing, keeping  
4 for sale, offering for sale, giving, lending, buying, receiving or possessing a magazine  
5 able to hold more than 10 rounds. For simple possession of a magazine holding more  
6 than 10 rounds, the crime is an infraction under § 32310(c). It is a much more serious  
7 crime to acquire a magazine holding more than 10 rounds in California by importing,  
8 buying, borrowing, receiving, or manufacturing. These acts may be punished as a  
9 misdemeanor or a felony under § 32310(a). Under the subsection's provision, "or  
10 imprisonment pursuant to subdivision (h) of Section 1170," punishment may be either a  
11 misdemeanor or a felony.

12 This Court concludes, once again, that manufacturing, importing, selling, giving,  
13 loaning buying, receiving, acquiring,<sup>133</sup> possessing, storing, or using commonly-owned  
14 magazines capable of holding more than 10 rounds for self-defense at home or in public  
15 is protected by the Second Amendment. Whether 50-round, 75-round, or 100-round  
16 drum magazines are constitutionally protected is a different question because they may be  
17 much less common and may be unusual.

#### 18 **A. Remand for Bruen Review**

19 This case was remanded from the United States Court of Appeals for the Ninth  
20 Circuit in order to consider the challenged laws under the recent Supreme Court decision  
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23 <sup>132</sup> *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 968 (9th Cir. 2014) ("Because  
24 restrictions on ammunition may burden the core Second Amendment right of self-defense  
25 and the record contains no persuasive historical evidence suggesting otherwise, section  
26 613.10(g) regulates conduct within the scope of the Second Amendment.").

27 <sup>133</sup> "This acquisition right is protected as an 'ancillary right' necessary to the realization  
28 of the core right to possess a firearm for self-defense." *Renna v. Becerra*, No. 20-cv-  
02190-DMS (DEB), 2021 WL 1597933, at \*6 (S.D. Cal. Apr. 23, 2021) (quoting  
*Teixeira v. County of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017)) (*en banc*) (core  
Second Amendment right "wouldn't mean much" without ability to acquire arms).

1 in *Bruen*. Under *Bruen*, the government must affirmatively prove that its firearm  
 2 regulation is part of a constitutional historical tradition. It is the same text, history, and  
 3 tradition standard the Court used in *Heller* and *McDonald*. What is different is that the  
 4 old means-end, interest balancing, tiers-of-scrutiny test is no longer viable.<sup>134</sup> The State  
 5 now has a second chance to defend its large capacity magazine ban and must do so  
 6 applying the *Bruen* test.

7 *Bruen* says,

8 When the Second Amendment’s plain text covers an  
 9 individual’s conduct, the Constitution presumptively protects  
 10 that conduct. *The government must then justify its regulation*  
 11 *by demonstrating that it is consistent with the Nation’s*  
 12 *historical tradition of firearm regulation.* Only then may a  
 court conclude that the individual’s conduct falls outside the  
 Second Amendment’s “unqualified command.”<sup>135</sup>

13 And *Bruen* confirms, once again, that the Second Amendment applies to modern arms.  
 14 “Thus, even though the Second Amendment’s definition of ‘arms’ is fixed according to  
 15 its historical understanding, that general definition covers modern instruments that  
 16 facilitate armed self-defense,” like magazines able to hold more than 10 rounds.<sup>136</sup>

17 **i. Already Determined: No Historical Pedigree**

18 This Court previously determined that a ban on magazines able to hold more than  
 19 10 rounds has no historical pedigree. Detachable magazines were invented in the late  
 20 19th Century.<sup>137</sup> In 1990, New Jersey introduced the first ban on detachable magazines,  
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22  
 23 <sup>134</sup> *Baird v. Bonta*, 2023 WL 5763345, \*5 (9th Cir. Sept. 7, 2023) (“In *Bruen*, the  
 24 Supreme Court expressly rejected the use of such ‘means-end scrutiny in the Second  
 Amendment context’ and described the two-step approach as ‘one step too many.’”).

25 <sup>135</sup> 142 S. Ct. at 2129–30 (emphasis added).

26 <sup>136</sup> *Id.* at 2132.

27 <sup>137</sup> “In 1879, Remington introduced the first ‘modern’ detachable rifle magazine. In the  
 28 1890s, semiautomatic pistols with detachable magazines followed. During WWI,  
 detachable magazines with capacities of 25 to 32-rounds were introduced.” Plaintiff’s  
 Exh. 2 (Stephen Helsley Report), at 4.

1 initially imposing a 15-round limit and later a 10-round limit. California put its ban in  
2 place in the year 2000. A historical tradition of magazine bans, this is not.

3 Before *Bruen*, the State unpersuasively argued that its magazine capacity  
4 restriction was analogous to a handful of state machinegun firing-capacity regulations  
5 from the 1920's and 1930's and one District of Columbia law from 1932—a law the  
6 Supreme Court ignored while dismantling the District of Columbia's handgun ban in  
7 *Heller*. That argument remains unpersuasive today. That was pre-*Bruen*. *Bruen* invites  
8 a look farther back into the Nation's history.

9 **ii. The State Asked for Time for Discovery**

10 Because the *Bruen* approach places the burden upon the government to justify its  
11 firearm restrictions by demonstrating that they are consistent with the Nation's historical  
12 tradition of firearm regulation as understood at the founding, and because judicial review  
13 under the *Bruen* standard is in its infancy, the State has been given generous time and  
14 leeway to satisfy its new burden. The State's experts have been studying historic firearm  
15 regulations for more than 20 years.<sup>138</sup> This Court has reviewed all of the declarations of  
16 the State's experts and historians as well as many of their cited sources, and finds no  
17 support for the State's ban.

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20 <sup>138</sup> The State's expert, professor Robert Spitzer, has studied gun policy for 30 years. *See*  
21 Decl. of Robert Spitzer, Dkt. 137-8 ("Spitzer Decl."), at ¶ 5. The State's expert,  
22 professor Saul Cornell, said that he has been studying gun regulations for 20 years. That  
23 was in 2017. *See* Saul Cornell, Five Types of Gun Laws the Founding Fathers Loved,  
24 Salon (Oct. 22, 2017, 7:29 a.m.), [https://www.salon.com/2017/10/22/five-types-of-gun-](https://www.salon.com/2017/10/22/five-types-of-gun-laws-the-founding-fathers-loved_partner/)  
25 [laws-the-founding-fathers-loved\\_partner/](https://www.salon.com/2017/10/22/five-types-of-gun-laws-the-founding-fathers-loved_partner/) [<https://perma.cc/73SL-VAKV>]. Ten years  
26 ago, Mark Anthony Frassetto compiled a list of over 1,000 historical gun laws spanning  
27 the years 1607 to 1934 and available on the Social Science Research Network.  
28 [<https://perma.cc/Q2L8-SW6U>]. His law collection was not unknown. It was described  
in detail in 2017 by professor Spitzer in his article *Gun Law History in the United States*  
and *Second Amendment Rights*, 80 L. & Contemp. Probs. 55 (2017), and included in  
professor Cornell's Compendium of Works cited in his Declaration, Dkt. 154-3, at 1707–  
33.

1                   **iii. Some Text, History, and Tradition Analysis is Already Done**

2                   Some of the time spent analyzing text, history, and tradition, has already been done  
3 by the Supreme Court. To begin, “the ‘textual elements’ of the Second Amendment’s  
4 operative clause—‘the right of the people to keep and bear Arms, shall not be  
5 infringed’—‘guarantee the individual right to possess and carry weapons in case of  
6 confrontation.’”<sup>139</sup> Further, “the right to ‘bear arms’ refers to the right to ‘wear, bear, or  
7 carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being  
8 armed and ready for offensive or defensive action in a case of conflict with another  
9 person.’”<sup>140</sup> The Supreme Court explains that the terms “keep” and “bear” mean that the  
10 Second Amendment’s text protects a citizen’s right to “‘keep’ firearms in their home, at  
11 the ready for self-defense,” and to carry arms on one’s person in and outside the home in  
12 case of confrontation.<sup>141</sup> As to the types of weapons the Second Amendment protects,  
13 *Bruen* echoes *Heller*, *McDonald*, *Caetano*, *Miller*, and *Blackstone*, pronouncing that it  
14 “protects the possession and use of weapons that are ‘in common use at the time.’”<sup>142</sup>

15                   In this case, Plaintiffs are law-abiding citizens who want to possess (or keep) and  
16 carry (or bear), magazines able to hold more than 10 rounds commonly-owned for lawful  
17 purposes. Plaintiffs’ proposed conduct is covered by the plain text of the Second  
18 Amendment. Under the plain text, the State’s statute infringes on the constitutional rights  
19 of American citizens. Therefore, Plaintiffs have met their burden of showing that the  
20 prohibited magazines fall within the Second Amendment’s text.

21                   *Bruen* next instructs courts to assess whether the initial conclusion is confirmed by  
22 the historical understanding of the Second Amendment. *Bruen* has already confirmed  
23 that the Second Amendment protects an individual right to armed self-defense. It repeats  
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26 <sup>139</sup> *Bruen*, 142 S. Ct. at 2134 (quoting *Heller*, 554 U.S. at 592).

27 <sup>140</sup> *Bruen*, 142 S. Ct. at 2134 (quoting *Heller*, 554 U.S. at 584).

28 <sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 2128 (citations omitted).



1 *Heller*’s lesson to not engage in means-end scrutiny, because, “[a] constitutional  
 2 guarantee subject to future judges’ assessments of its usefulness is no constitutional  
 3 guarantee at all.”<sup>143</sup> After all, “[t]he Second Amendment ‘is the very product of an  
 4 interest balancing by the people’ and it ‘surely elevates above all other interests the right  
 5 of law-abiding, responsible citizens to use arms’ for self-defense. It is this balance—  
 6 struck by the traditions of the American people—that demands our unqualified  
 7 deference.”<sup>144</sup>

#### 8 **B. Bruen’s Guidelines for Historical Inquiry**

9 For conducting a historical inquiry, *Bruen* identifies a number of guidelines. First,  
 10 “when a challenged regulation addresses a general societal problem that has persisted  
 11 since the 18th century, the lack of a distinctly similar historical regulation addressing that  
 12 problem is relevant evidence that the challenged regulation is inconsistent with the  
 13 Second Amendment.”<sup>145</sup> Second, “if earlier generations addressed the societal problem,  
 14 but did so through materially different means, that also could be evidence that a modern  
 15 regulation is unconstitutional.”<sup>146</sup> Third, “if some jurisdictions actually attempted to  
 16 enact analogous regulations during this timeframe, but those proposals were rejected on  
 17 constitutional grounds, that rejection surely would provide some probative evidence of  
 18 unconstitutionality.”<sup>147</sup> Fourth, “cases implicating unprecedented societal concerns or  
 19 dramatic technological changes may require a more nuanced approach.”<sup>148</sup> Fifth, “[w]hen  
 20 confronting such present-day firearm regulations, this historical inquiry that courts must  
 21 conduct will often involve reasoning by analogy.”<sup>149</sup> “Determining whether a historical  
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 24 <sup>143</sup> *Id.* at 2129 (quoting *Heller*, 554 U.S. at 634).

25 <sup>144</sup> *Bruen*, 142 S. Ct. at 2131 (quoting *Heller*, 554 U.S. at 635).

26 <sup>145</sup> *Bruen*, 142 S. Ct. at 2131.

27 <sup>146</sup> *Id.*

28 <sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 2132.

<sup>149</sup> *Id.*



1 regulation is a proper analogue for a distinctly modern firearm regulation requires a  
 2 determination of whether the two regulations are ‘relevantly similar.’”<sup>150</sup> *Bruen* notes,

3           analogical reasoning under the Second Amendment is neither a  
 4           regulatory straightjacket nor a regulatory blank check. On the  
 5           one hand, courts should not “uphold every modern law that  
 6           remotely resembles a historical analogue,” because doing so  
 7           “risks endorsing outliers that our ancestors would never have  
 8           accepted.” On the other hand, analogical reasoning requires  
 9           only that the government identify a well-established and  
 10           representative historical analogue, not a historical twin. So  
 11           even if a modern-day regulation is not a dead ringer for  
 12           historical precursors, it still may be analogous enough to pass  
 13           constitutional muster.<sup>151</sup>

11 In surveying American history, the task is to stay within *Bruen*’s guardrails. As to the  
 12 road ahead, it is a road back to 1791.

13           **i. The Significant Time Period—1791 to 1868**

14           *Bruen* teaches the most significant historical evidence comes from 1791, and  
 15           secondarily 1868. For the Second Amendment (and other protections in the Bill of  
 16           Rights), “Constitutional rights are enshrined with the scope they were understood to have  
 17           when the people adopted them.”<sup>152</sup> The Second Amendment was adopted in 1791.  
 18           “[W]e have generally assumed that the scope of the [Second Amendment] protection  
 19           applicable to the Federal Government and States is pegged to the public understanding of  
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 23 <sup>150</sup> *Id.*

24 <sup>151</sup> *Id.* at 2133.

25 <sup>152</sup> *Id.* at 2136 (quoting *Heller*, 554 U.S. at 634–35); *cf. Kennedy v. Bremerton*, 142 S. Ct.  
 26 2407, 2428 (2022) (“[T]his Court has instructed that the Establishment Clause must be  
 27 interpreted by reference to historical practices and understandings. The line . . . has to  
 28 accord with history and faithfully reflect the understanding of the Founding Fathers.”)  
 (cleaned up); *Riley v. California*, 573 U.S. 373, 403 (2014) (“Our cases have recognized  
 that the Fourth Amendment was the founding generation’s response to the reviled  
 ‘general warrants’ and ‘writs of assistance’ of the colonial era.”).

1 the right when the Bill of Rights was adopted in 1791.”<sup>153</sup> Consequently, whatever  
 2 evolving standards of gun regulation the state legislature thought was good policy in the  
 3 year 2000 (when it decided 11 rounds is not well-suited for a person to have in a gun) or  
 4 the year 2016 (when it was amended by Proposition 63), or today, is not the test for  
 5 constitutional scrutiny.

6 Courts are to “afford greater weight to historical analogues more contemporaneous  
 7 to the Second Amendment’s ratification.”<sup>154</sup> British sources pre-dating the Constitution  
 8 are not particularly instructive because the American Revolution was a rejection of  
 9 British rule. Sources post-enactment are also less helpful.<sup>155</sup> “[T]o the extent later  
 10 history contradicts what the text says, the text controls . . . . Thus, post-ratification  
 11 adoption or acceptance of laws that are inconsistent with the original meaning of the  
 12 constitutional text obviously cannot overcome or alter that text.”<sup>156</sup> Late 19th century  
 13 evidence is not particularly instructive, “because post-Civil War discussions of the right  
 14 to keep and bear arms ‘took place 75 years after the ratification of the Second  
 15 Amendment, they do not provide as much insight into its original meaning as earlier  
 16 sources.’”<sup>157</sup> Even so, evidence from the time period enforces the claim that the right to

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 19 <sup>153</sup> *Bruen*, 142 S. Ct. at 2137.

20 <sup>154</sup> *Rahimi*, 61 F.4th at 456; *contra Nat’l Rifle Ass’n v. Bondi*, 61 F.4th 1317, 1323 (11th  
 21 Cir. 2023) (“For most cases, the Fourteenth Amendment Ratification Era understanding  
 22 of the right to keep and bear arms will differ from the 1789 understanding. And in those  
 23 cases, the more appropriate barometer is the public understanding of the right when the  
 States ratified the Fourteenth Amendment and made the Second Amendment applicable  
 to the States.”).

24 <sup>155</sup> *Bruen*, 142 S. Ct. at 2136 (“Similarly, we must also guard against giving  
 postenactment history more weight than it can rightly bear.”).

25 <sup>156</sup> *Id.* at 2137 (citations omitted) (cleaned up).

26 <sup>157</sup> *Id.* (quoting *Heller*, 554 U.S. at 614). There is little reason to rely on laws from the  
 27 later part of the 1800’s or the 1900’s rather than ones put into effect at the time of the  
 founding in view of *Bruen*’s central question about the meaning of the Second  
 Amendment as understood by the people who adopted it. *See Worth v. Harrington*, No.  
 28 21-cv-01348-KMM-LIB, 2023 WL 2745673, at \*12 (D. Minn. Mar. 31, 2023) (“But the

1 keep and bear arms continued to be regarded as a fundamental right. The Supreme Court  
 2 gauged the most explicit evidence appeared in the Freedmen’s Bureau Act of 1866. “The  
 3 most explicit evidence of Congress’ aim,” according to *McDonald*, “appears in § 14 of  
 4 the Freedmen’s Bureau Act of 1866, which provided that ‘the right . . . to have full and  
 5 equal benefit of all laws and proceedings concerning personal liberty, personal security  
 6 [and] . . . including the constitutional right to bear arms, shall be secured to and enjoyed  
 7 by all the citizens.’”<sup>158</sup> *McDonald* points to one senator’s description of the right to bear  
 8 arms for one’s defense as an “indispensable safeguard of liberty.” *McDonald* writes,

9 “Every man . . . should have the right to bear arms  
 10 for the defense of himself and family and his  
 11 homestead. And if the cabin door of the freedman  
 12 is broken open and the intruder enters for purposes  
 13 as vile as were known to slavery, then should a  
 14 well-loaded musket be in the hand of the occupant  
 15 to send the polluted wretch to another world,  
 where his wretchedness will forever remain  
 complete.”<sup>159</sup>

16 Thus, it can be said that, even at the time of the Fourteenth Amendment, the right to keep  
 17 and bear guns was a necessary right to preserve. “In sum, it is clear that the Framers and  
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19  
 20 Commissioner offers no persuasive reason why this Court should rely upon laws from the  
 21 second half of the nineteenth century to the exclusion of those in effect at the time of the  
 22 founding in light of *Bruen*’s warnings not to give post-Civil War history more weight  
 23 than it can rightly bear.”); *Firearms Pol’y Coalition, Inc. v. McCraw*, No. 4:21-cv-01245-  
 24 P, 2022 WL 3656996, at \*11 (N.D. Tex. Aug. 25, 2022); *United States v. Harrison*, No.  
 25 CR 22-00328-PRW, 2023 WL 1771138, at \*8 (W.D. Okla. Feb. 3, 2023) (quoting *Bruen*,  
 142 S. Ct. at 2136 (Barrett, J., concurring) (“[T]oday’s decision should not be understood  
 26 to endorse freewheeling reliance on historical practice from the mid-to-late 19th century  
 27 to establish the original meaning of the Bill of Rights.”)); *contra Hanson*, No. CV 22-  
 2256-RC, 2023 WL 3019777, at \*16 (“In this case, it is appropriate to apply 20th century  
 history to the regulation at issue.”).

28 <sup>158</sup> *McDonald*, 561 U.S. at 773.

<sup>159</sup> *McDonald*, 561 U.S. at 775-76 (citation omitted).

1 ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among  
2 those fundamental rights necessary to our system of ordered liberty.”<sup>160</sup>

3 *Bruen* and *Heller* have already considered some of the historical firearm statutes.  
4 Consequently, we know that colonial laws restricting handguns that were dangerous and  
5 unusual in the 1690’s do not justify modern laws restricting handguns. The Court  
6 explains that even if handguns were considered “dangerous and unusual” in the 1690’s, it  
7 would not matter because handguns are common today. As *Bruen* puts it,

8 Whatever the likelihood that handguns were considered  
9 “dangerous and unusual” during the colonial period, they are  
10 indisputably in “common use” for self-defense today. They are,  
11 in fact, “the quintessential self-defense weapon.” Thus, even if  
12 these colonial laws prohibited the carrying of handguns because  
13 they were considered “dangerous and unusual weapons” in the  
14 1690s, they provide no justification for laws restricting the  
15 public carry of weapons that are unquestionably in common  
16 use.

### 15 C. The State’s List of Relevant Laws

16 To aid in the task of looking for a national “historical tradition of firearm  
17 regulation,” the State was directed to create a list of relevant laws regulating arms dating  
18 from the time of the Second Amendment (1791) to 20 years after the Fourteenth  
19 Amendment (1868 + 20). This was not an acknowledgement that 20 years after the  
20 Fourteenth Amendment is a relevant period. Twenty years after the Fourteenth  
21 Amendment is an admittedly arbitrary limit and probably includes laws too late to shed  
22 much light.

23 In any event, the State went far beyond. The State produced a list of 316 laws  
24 covering 550 years—from 1383 to 1933.<sup>161</sup> Many of the entries are not relevant because  
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27 <sup>160</sup> *McDonald*, 561 U.S. at 778.

28 <sup>161</sup> See Def’s Survey of Relevant Statutes, Dkt. 139-1 to 3 (citations to the individual law  
entries herein are indicated by brackets [--]).

1 they came much earlier or later than the most significant time period of 1791–1868. The  
 2 first fourteen listed laws pre-date the Second Amendment.<sup>162</sup> On the other end, the last  
 3 225 laws post-date the adoption of the Fourteenth Amendment. Also, two-thirds of the  
 4 State’s list (199 laws) are restrictions on *use*—not on possession or acquisition. Here, the  
 5 magazine ban prohibits possession, manufacturing, giving, lending, offering for sale, etc.,  
 6 rather than regulating the *use* or *manner* of carrying ammunition or its magazines.  
 7 Twenty-two tax laws are included in the State’s historical list, yet the law challenged here  
 8 imposes no tax on magazines. The State’s historical list also includes, surprisingly, 38  
 9 laws that applied only to particular groups, such as slaves, Blacks, or Mulattos. Those  
 10 laws are not relevant to the magazine prohibition challenged in this case. “And  
 11 Founding-era statutes that disarmed groups of persons who governments thought might  
 12 be dangerous because of their race or religion were not considered analogous to modern  
 13 carry prohibitions on released felons also thought to be dangerous: ‘any such analogy  
 14 would be far too broad.’”<sup>163</sup> Even if they were, this Court would give such  
 15 discriminatory laws little or no weight.

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 20 <sup>162</sup> The State includes in its list a concealed carry statute in East New Jersey from 1686  
 21 which treated pocket pistols as “unusual” weapons. [6]. *Bruen* bulldozed that citation.  
 22 The East New Jersey statute was too old and too different. *Bruen* found little there to  
 23 commend a present-day ban on carrying pistols. The statute prohibited only the  
 24 concealed carrying of pocket pistols; it did not prohibit possession or public carrying.  
 25 *Bruen*, 142 S. Ct. at 2143. The statute did not apply to all pistols, much less all firearms.  
 26 Moreover, even if pocket pistols were uncommon in 1686 in East New Jersey, they were  
 27 commonly used by the time of the founding. *Id.* at 2144 and n.13. The statute did not  
 28 survive the merger of East and West New Jersey in 1702. Consequently, the Court made  
 short work of the history summing it up, “[a]t most eight years of history in half a Colony  
 roughly a century before the founding sheds little light on how to properly interpret the  
 Second Amendment.” *Id.* at 2144.

<sup>163</sup> *Baird*, 2023 WL 5763345 at \*8 (citations omitted).

1 **IV. IN AMERICA PEOPLE WERE GENERALLY FREE TO CARRY**  
 2 **FIREARMS PUBLICLY AND PEACEABLY FROM 1791 to 1868**

3 **A. Traditions**

4 The history and tradition of the United States is a tradition of widespread gun  
 5 ownership and expertise. *Bruen* says, “those who sought to carry firearms publicly and  
 6 peaceably in antebellum America were generally free to do so.”<sup>164</sup> Thomas Jefferson  
 7 pointed out that our soldiers were good shots because they had practiced with guns since  
 8 they were children. Jefferson wrote,

9 I inclose you a list of the killed, wounded, and captives of the  
 10 enemy from the Commencement of hostilities at Lexington in  
 11 April 1775, until November 1777. since which there has been  
 12 no event of any consequence ... I think that upon the whole it  
 13 has been about one half the number lost by them. In some  
 14 instances more, but in others less. *This difference is ascribed to*  
*our superiority in taking aim when we fire; every soldier in our*  
*army having been intimate with his gun from his infancy.*<sup>165</sup>

15 Then, having firearms was commonplace. Carrying firearms was accepted. Proficiency  
 16 with firearms was encouraged. Readiness with firearms was required. Then, as now,  
 17 terrorizing with a firearm or carrying a firearm with the intent to assault another was  
 18 punishable. But, “[n]one of the [] historical limitations on the right to bear arms . . .  
 19 operated to prevent law-abiding citizens with ordinary self-defense needs from carrying  
 20 arms in public for that purpose.”<sup>166</sup>

21 Notwithstanding having significant time to do so, the State has identified no  
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23  
 24 <sup>164</sup> 142 S. Ct. at 2146.

25 <sup>165</sup> Letter from Thomas Jefferson, to Giovanni Fabbroni, *Founders Online*, National  
 26 Archives (June 8, 1778), [https://founders.archives.gov/documents/Jefferson/01-02-02-](https://founders.archives.gov/documents/Jefferson/01-02-02-0066)  
 27 [0066 \[https://perma.cc/8VTV-K9HB\]](https://perma.cc/8VTV-K9HB); [Original source: *The Papers of Thomas Jefferson*,  
 28 vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press,  
 1950, pp. 195–98] (emphasis added).

<sup>166</sup> *Bruen*, 142 S. Ct. at 2150.

1 historical statute or national tradition of firearm regulation so broad in its coverage or so  
2 far reaching in its effect as its large capacity magazine ban. So, what are the traditions of  
3 firearm regulation evidenced by the State’s law list?

4 Historical regulations are considered chronologically, “mindful that greater weight  
5 attaches to laws nearer in time to the Second Amendment’s ratification.”<sup>167</sup> The Court  
6 has reviewed every law cited in the State’s list. It has sometimes searched for the actual  
7 text of a cited law rather than the parties’ summary in order to understand any legal  
8 nuance. It has reviewed the laws with a view to understanding the tradition of all the  
9 states and their contexts. For example, as the nation expanded old states became interior  
10 states and new states became frontier states. Frontier states often had different social and  
11 security concerns than did the interior of the new nation. The Court sought to understand  
12 how states responded to new technological developments in ammunition, revolvers,  
13 repeaters, and high-capacity, fast-shooting, lever-action rifles.

14 The State’s experts opine that gun laws were plentiful and widespread and firearm  
15 regulation was the norm. But, if the test were to look at gun laws with that level of  
16 generality, no gun law would ever fail scrutiny and *Heller*, *McDonald* and *Bruen* could  
17 not have been decided as they were. Furthermore, as will be shown, it is an exaggeration.  
18 The State also says regulations on dangerous or unusual *weapons* existed throughout  
19 American history. By “weapons,” the State means non-firearms.

20 Relevantly similar regulations are *firearm* prohibitions—not bladed or melee  
21 weapon regulations. And neither “dangerous or unusual” nor “unusually dangerous” is  
22 the test, although the State cannot point to an outright prohibition on even unusual or  
23 unusually dangerous *firearms* until Alabama’s 1868 prohibition on the dangerous and  
24 unusual rifle-walking cane. [87]

25 Because the State cannot find a historic regulation of *firearms*, it turns to the  
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28 <sup>167</sup> *Rahimi*, 61 F.4th at 456.



1 historic regulations of *weapons*, whether bladed weapons, melee weapons, blunt  
 2 weapons, or leaded weapons. Yet, the Supreme Court does not look to knife laws when  
 3 reviewing a restriction about guns. *Bruen* teaches that a state’s burden is to identify a  
 4 historical tradition of *firearm* regulation, not a tradition of knife regulation. Underscoring  
 5 the importance of its words, three different times *Bruen* repeats the specific phrase  
 6 “firearm regulation,” as in the following instances: (1) “Rather, the government must  
 7 demonstrate that the regulation is consistent with this Nation’s historical tradition of  
 8 *firearm regulation*,”<sup>168</sup> (2) “The government must then justify its regulation by  
 9 demonstrating that it is consistent with the Nation’s historical tradition of *firearm*  
 10 *regulation*,”<sup>169</sup> and (3) “[T]he burden falls on respondents to show that New York’s  
 11 proper-cause requirement is consistent with this Nation’s historical tradition of *firearm*  
 12 *regulation*.”<sup>170</sup> In contrast, the *Bruen* majority opinion did not mention bowie knives at  
 13 all. The Supreme Court was not interested in traditions of knife regulation or melee  
 14 regulation. Even in the dissent, bowie knife laws were hardly mentioned. Consequently,  
 15 when the State asserts, “weapons restrictions proliferated,” it misses the mark by  
 16 referring to non-firearm weapon restrictions or concealed carrying restrictions.<sup>171</sup>

17 During the most important period of history, there were relatively few firearm  
 18 regulations.<sup>172</sup> This conclusion can be drawn from inspecting the State’s historic law list,  
 19 and is confirmed by at least one historian: “Between 1607 and 1815 . . . the colonial and  
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 22 <sup>168</sup> *Bruen*, 142 S. Ct. at 2126 (emphasis added).

23 <sup>169</sup> *Id.* at 2130 (emphasis added).

24 <sup>170</sup> *Id.* at 2135 (emphasis added).

25 <sup>171</sup> Def’s Br. in Resp., Dkt. 142, at 20.

26 <sup>172</sup> It is true that there were laws criminalizing the *use* of guns for criminal acts such as  
 27 carrying a gun with intent to assault another, or displaying a gun in a threatening manner.  
 28 These were crimes of violence, not crimes of possession. California, as it should, has  
 similar laws today, such as California Penal Code § 245(a)(2) & (3) (assault with a  
 deadly weapon - firearm) and § 417(a)(2) (exhibition of a firearm in a rude, angry, or  
 threatening manner).



1 state governments of what would become the first fourteen states neglected to exercise  
 2 any police power over the ownership of guns by members of the body politic . . . . These  
 3 limits on colonial and early state regulation of arms ownership outlined a significant zone  
 4 of immunity around the private arms of the individual citizen.”<sup>173</sup> It is a conclusion  
 5 confirmed by the Supreme Court. “Apart from a few late 19th-century outlier  
 6 jurisdictions, American governments simply have not broadly prohibited the public carry  
 7 of commonly used firearms for personal defense.”<sup>174</sup>

8 There were regional differences, no doubt.<sup>175</sup> As the nation aged, northern states  
 9 had virtually no restrictions on guns and none on ammunition while southern states  
 10 tended to mainly prohibit concealed carrying.<sup>176</sup> In short, the State argues that because  
 11 some states have regulated in some ways the use of some *weapons* (primarily knives and  
 12 melee devices), that translates into the State being able to regulate any magazine in any  
 13 way. That is a *non sequitur* and in this particular case—a bridge too far.

14 **i. No Prohibitions on Possessing Guns**

15 It is remarkable to discover that there were no outright prohibitions on keeping or  
 16 possessing guns. No laws of any kind.<sup>177</sup> Based on a close review of the State’s law list  
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 19 <sup>173</sup> Robert H. Churchill, *Forum: Rethinking the Second Amendment*, 25 L. & Hist. Rev.  
 20 139, 161 (2007).

21 <sup>174</sup> *Bruen*, 142 S. Ct. at 2156.

22 <sup>175</sup> “[T]here were profound regional differences in early America.” Decl. of Saul Cornell,  
 23 Dkt. 118-4 (“Cornell Decl.”) at n.49.

24 <sup>176</sup> Don B. Kates, Jr., *Restricting Handguns* 12 (North River Press ed., 1979), found in  
 25 Compendium Works Cited in Decl. of Randolph Roth, Dkt. 118-8, at n.53 and 0349 (“By  
 26 1850, every Western state barred the carrying of concealed weapons. In contrast, none of  
 27 the Northeastern states adopted even that mild a restriction until nearly the turn of the  
 28 twentieth century. Until 1924, for instance, the only gun law in New Jersey was the  
 prohibition of dueling.”).

<sup>177</sup> According to one scholar, the first prohibition on simple ownership of a gun came in  
 1911. Churchill, *supra*, at 139 n.61 (“The first law restraining gun ownership by citizens  
 mentioned in the secondary literature is New York’s 1911 Sullivan Law, which  
 prohibited the ownership of concealable arms without a police permit.”); *see also* David

1 and the Court’s own analysis, Plaintiffs are correct in asserting that there are no  
 2 Founding-era categorical bans on firearms in this nation’s history. Though it is the  
 3 State’s burden, even after having been offered plenty of opportunity to do so, the State  
 4 has not identified any law, anywhere, at any time, between 1791 and 1868 that prohibited  
 5 simple possession of a gun or its magazine or any container of ammunition (unless the  
 6 possessor was an African-American or a slave or a mulatto).<sup>178</sup>

7 Surely, with 315 other entries in the State’s law list, there must be many other laws  
 8 in the relevant time period of demonstrating a tradition of firearm regulation analogous to  
 9 the large capacity magazine ban. What else is there?

## 10 **ii. No Gun Laws In The Northern States For 50 Years**

11 From the adoption of the Second Amendment through the next 50 years, there  
 12 were no firearm restrictions in any states north of the Mason-Dixon Line.<sup>179</sup> One could  
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14  
 15 B. Kopel and Joseph G.S. Greenlee, *This History of Bans on Types of Arms Before 1900*  
 16 50 J. of Legis., Apr. 25, 2023, at 45–46 (2024), <https://ssrn.com/abstract=4393197>  
 17 [<https://perma.cc/P85U-ASTZ>] (“Before, during, and after the Revolution, no state  
 18 banned any type of arm, ammunition, or accessory. Nor did the Continental Congress,  
 19 the Articles of Confederation Congress, or the federal government created by the U.S.  
 20 Constitution in 1787 . . . . There is no evidence that any of the Founders were concerned  
 21 about individuals having too much firepower. After a long, grueling war against the  
 22 world’s strongest military, limiting individuals’ capabilities was not a concern.”).

23 <sup>178</sup> Even before *Bruen* was decided, at least one other judge has applied the text, history,  
 24 and tradition test with analogical reasoning for a 10-round magazine ban, and came to the  
 25 same conclusion. See *Ass’n of N.J. Rifle & Pistol Clubs Inc. v. AG N.J.*, 974 F.3d 237,  
 26 258 (3d Cir. 2020) (Matey, J. dissenting) (“This history reveals a long gap between the  
 27 development and commercial distribution of magazines, on the one hand, and limiting  
 28 regulations, on the other hand. . . . Some will argue there must be an outer boundary to  
 this analysis that, when crossed, renders a magazine dangerous and unusual. If so, it does  
 not appear in the history and traditions of our Nation. . . . As a result, and limited to this  
 record, I would hold that magazines are arms protected by the Second Amendment and  
 an act limiting magazine capacity to 10 rounds burdens the Appellants’ Second  
 Amendment rights.”).

<sup>179</sup> The Mason-Dixon Line established the boundary line between Pennsylvania and  
 Maryland. Beyond its importance as a literal boundary between states, “the Mason-

live in any of the northern states without restrictions of almost any kind.<sup>180</sup> A gun owner enjoyed freedom with no infringing prohibitions from 1789 to 1845 in Pennsylvania, New York, Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, Maine, Ohio, Illinois, Michigan, or Indiana. One might never be subject to a later surety statute in Massachusetts (1836) [29] and Maine (1841) [46].<sup>181</sup> If anything, regulations were not about what kind of firearm one was *not* allowed to keep, but about the kind of firearm one was *required* to buy and have ready for militia duties.

The same was largely true south of the Mason-Dixon Line (disregarding laws targeting slaves and Indians, neither of which were considered to be citizens by lawmakers). A citizen could reside in any of the northern states and half of the southern states for the first fifty years free from state government firearm restrictions. This

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Dixon Line has become known as the boundary between the North and the South. It took on that association on March 1, 1790, when the Pennsylvania Assembly passed legislation ending slavery in the state. Thus, the Mason-Dixon Line became the legal and the philosophical boundary between slave territory and free land, since slavery was still allowed in Maryland. That was especially true after the Missouri Compromise was passed in 1820, which prohibited slavery north of the Mason-Dixon Line. To the many slaves who used whatever means necessary to reach free land, the Mason-Dixon Line became important to their freedom. For the slaves located in Maryland, they only needed to get to the state line to secure their freedom, although many continued traveling north in an attempt to get as far away from their former masters as possible.” Kathryn DeVan, *Our Most Famous Border: The Mason-Dixon Line*, Pa. St. Univ. (fall 2008), <https://pabook.libraries.psu.edu/literary-cultural-heritage-map-pa/feature-articles/our-most-famous-border-mason-dixon-line> [https://perma.cc/B6WN-DHAC].

<sup>180</sup> The State lists one New Jersey statute from 1799 as a law purportedly prohibiting the carrying of a pistol with the intent to assault [19], but this appears to be a sentencing enhancement statute applicable only if one was apprehended for burglary. *See An Act to Describe, Apprehend and Punish Disorderly Persons* (1799), Duke Ctr. For Firearms L., Charles Nettleton, *Laws of the State of New-Jersey* Page 474, Image 501 (1821) available at *The Making of Modern Law: Primary Sources*, <https://firearmslaw.duke.edu/laws/charles-nettleton-laws-of-the-state-of-new-jersey-page-474-image-501-1821-available-at-the-making-of-modern-law-primary-sources/>.

<sup>181</sup> That the two states would share similar laws makes sense since Maine was part of the larger Commonwealth of Massachusetts prior to achieving statehood in 1820.

1 understanding is based on a methodical reading and assessment of the laws set out in the  
2 State's survey. While the parties' experts express some disagreements, their contrary  
3 opinions are unpersuasive.

4 In the northern states there were hardly any firearm laws at all, let alone a tradition  
5 of criminalizing the act of keeping or carrying any firearm. For the District of Columbia,  
6 governed by Congress, there were no firearm laws for the first 80 years until a concealed  
7 carry prohibition was enacted in 1871. [97]. Maine enacted its first law, a gunpowder  
8 storage regulation to prevent fires, in 1821. [27]. Massachusetts enacted its first firearm  
9 statute in 1836 as a surety law [29] with Maine following suit in 1841. [46]. *Bruen*  
10 already notes that under the surety laws everyone started out with robust carrying rights  
11 and *Bruen* saw little evidence that the laws were enforced.

12 Illinois was admitted to the Union in 1818. In 1845, Illinois enacted its first  
13 firearm statute criminalizing carrying a gun *with the intent to assault another person*.  
14 [49]. Indiana became a state in 1816. In 1855, Indiana criminalized shooting a gun, or  
15 throwing stones or sticks, at a train. [62]. The law did not concern keeping any gun  
16 whatsoever, or carrying a gun anywhere, in any manner whatsoever.<sup>182</sup> Ohio became a  
17 state in 1808. The State's law list shows no Ohio state laws respecting firearms until  
18 1859. [70]. Ohioans did not have a gun law until nearly 70 years after the adoption of  
19 the Second Amendment. Its first gun law was one that prohibited carrying a pistol, bowie  
20 knife, dirk, or other dangerous weapon *concealed*. California enacted its first gun  
21 regulation in 1853, which criminalized the act of having "upon him any pistol, gun, knife,  
22

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23 <sup>182</sup> The State's law list erroneously describes the 1855 Indiana law as one prohibiting the  
24 carrying of a pistol with the intent to injure another. This appears to be a scrivener's  
25 error. Although the State does not include it in its law list, Indiana may have enacted an  
26 earlier statute prohibiting carrying a pistol concealed, with an exception made for  
27 travelers. "In *State v. Mitchell*, 3 Blackf. 229, 1833 WL 2617 (Ind. 1833), the Supreme  
28 Court of Indiana, in a one-sentence opinion, upheld a state statute prohibiting the general  
public from carrying concealed weapons." *Peruta v. Cnty. of San Diego*, 824 F.3d 919,  
933 (9th Cir. 2016).

1 dirk, bludgeon, or other offensive weapon, with intent to assault any person.” [57].

2 In short, the history and tradition of the northern states, states north of the Mason-  
3 Dixon Line, was to leave firearm ownership and use completely unregulated. From the  
4 time of the adoption of the Second Amendment to the time of the adoption of the  
5 Fourteenth Amendment, there were no state gun laws in Pennsylvania, New York,  
6 Connecticut, Rhode Island, Vermont, New Hampshire, Michigan, Wisconsin, Minnesota,  
7 Iowa, Nebraska, Kansas, Missouri, or the District of Columbia. In Massachusetts and  
8 Maine there were only surety statutes. In New Jersey there was a sentencing  
9 enhancement for carrying a pistol while committing a burglary. In this half of the nation,  
10 keeping and bearing firearms was done freely without government interference.

11 **iii. No Gun Laws In The Southern States For 50 Years**

12 South of the Mason-Dixon Line, where slavery was practiced, there were many  
13 laws restricting firearms for slaves, African-Americans, and Indians. Setting aside that  
14 obviously unconstitutional tradition, among the southern states firearm ownership was  
15 largely unregulated for at least the first 50 years after 1791. Like the northern states,  
16 from 1791 to 1868 there were no state gun laws in Delaware, North Carolina, South  
17 Carolina, Mississippi, Florida, West Virginia, and Texas, according to the State’s law list.

18 The few laws in other southern states that did exist concerned mainly: (1) carrying  
19 a pistol *with the intent to assault another*; and (2) carrying a pistol in a *concealed*  
20 manner. Tennessee enacted the first firearm regulation in the southern states in 1801 in  
21 the form of a surety law—it was a law dismissed by *Bruen*. [20]. A decade later in  
22 1811, Maryland passed the second firearm regulation in the south. [23]. The Maryland  
23 law was, not a prohibition, but a sentencing enhancement for carrying a pistol *with the*  
24 *intent to assault another*.

25 In 1813, Louisiana passed the first law prohibiting the carrying of a *concealed* gun.  
26  
27  
28

[24].<sup>183</sup> *Bruen* noticed that a Louisiana court found the prohibition on concealed carrying constitutional only because it permitted open carrying of a firearm.<sup>184</sup> Kentucky passed a prohibition on carrying a *concealed* pistol that year, although it is omitted from the State’s law list. Perhaps it is omitted because Kentucky’s concealed carry law was struck down as unconstitutional a short time later. The only other firearm regulation in the south during this time period was Georgia’s 1816 law prohibiting the carrying of a pistol *with intent to assault* another person. [25].

Around 50 years after the Second Amendment, four southern states passed their own first firearm regulations, also in the form of *concealed* carry prohibitions. In 1837, Arkansas banned carrying a pistol concealed unless on a journey. [32]. In 1837, Georgia added its own prohibition on carrying a pistol concealed. [33]. The constitutionality of the Georgia law was upheld because open carry was unregulated.<sup>185</sup> In 1838, Virginia prohibited carrying a pistol concealed. [40]. In 1839, Alabama prohibited carrying a firearm concealed [41], later adding exceptions for self-defense and for travelers. [45].<sup>186</sup>

Three more regulations were enacted in the south in the years leading up to the Fourteenth Amendment’s adoption. In 1856, Tennessee passed a law affecting only minors. [65]. In 1868, Florida prohibited carrying secretly “arms of any kind whatever”

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<sup>183</sup> Louisiana reenacted similar, if not the same, statutes two more times, in 1842 and again in 1855. [63].

<sup>184</sup> 142 S. Ct. at 2146 and n.19 (quoting *State v. Chandler*, 5 La. 489, 490 (1850) (“Louisiana concealed-carry prohibition ‘interfered with no man’s right to carry arms (to use its words) “in full open view,” which places men upon an equality”)).

<sup>185</sup> *Nunn v. State*, 1 Ga. 243, 251 (1846) (“We are of the opinion, then, that so far as the act of 1837 seeks to suppress the practice of carrying certain weapons secretly, that it is valid, inasmuch as it does not deprive the citizen of his natural right of self-defence, or of his constitutional right to keep and bear arms. But that so much of it, as contains a prohibition against bearing arms openly, is in conflict with the Constitution, and void.”).

<sup>186</sup> *Lockett v. State*, 47 Ala. 42, 45–46 (1872) (“Nor is it required that he should have any necessity for the use of his pistols. It is enough if he was traveling on a journey, long or short.”).



1 and the outright carrying of a pistol or other arm or weapon. [90]. The Florida law was  
2 not scrutinized in a published court decision.<sup>187</sup>

3       Significantly, the first restriction on a *dangerous and unusual* firearm did not occur  
4 until 1868, the year the Fourteenth Amendment was adopted. That year, Alabama  
5 prohibited carrying a rifle walking cane. [87]. A rifle walking cane was a single shot  
6 rifle disguised to appear as a walking cane with a variety of handles. When fired, one  
7 bullet would exit through the bottom of the cane. It was patented in 1858 and  
8 manufactured by the E. Remington & Sons company until approximately 1888, with less  
9 than 2,000 produced.<sup>188</sup> Remington was the only major gun maker to produce a rifle  
10 walking cane gun. California currently has a law prohibiting possession of a “cane gun.”  
11 *See* Cal. Penal Code § 24410.

12       In short, the history and tradition of the states south of the Mason-Dixon Line, was  
13 to leave firearm ownership and use mostly unregulated. At least for the first half of the  
14 century, in this half of the nation, keeping and bearing firearms was done freely, with a  
15 handful of states enacting prohibitions on carrying pistols in public in a concealed  
16 manner, and Maryland and Georgia making it a crime to carry a firearm with the intent to  
17 assault another person.

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20 <sup>187</sup> However, an 1867 court decision considered an earlier law where only *concealed*  
21 carrying was prohibited. *See Sutton v. State*, 12 Fla. 135, 136 (1867) (“The statute under  
22 which this indictment was found provides, ‘that hereafter it shall not be lawful for any  
23 person in this State to carry arms of any kind secretly on or about their person, &c.:  
24 Provided, that this law shall not be so construed as to prevent any person from carrying  
25 arms openly outside of all their clothes’ . . . . The statute was not intended to infringe  
26 upon the rights of any citizen to bear arms for the ‘common defense.’ It merely directs  
27 how they shall be carried, and prevents individuals from carrying concealed weapons of a  
28 dangerous and deadly character, on or about the person, for the purpose of committing  
some malicious crime, or of taking some undue advantage over an unsuspecting  
adversary.”).

<sup>188</sup> *See* Remington Soc’y of Am., *Remington Cane Guns*,  
<https://www.remingtonsociety.org/remington-cane-guns/> [<https://perma.cc/A74W-EHPT>]  
(last visited May 26, 2023).

1           **iv. Territories**

2           Among the State’s law list is a number of regulations from 19th century territories.  
 3 *Bruen* has already considered such laws and decided they are not particularly helpful for  
 4 several reasons. “First, the bare existence of these localized restrictions cannot overcome  
 5 the overwhelming evidence of an otherwise enduring American tradition . . . .”<sup>189</sup> “These  
 6 territorial ‘legislative improvisations,’ which conflict with the Nation’s earlier approach  
 7 to firearm regulation, are most unlikely to reflect ‘the origins and continuing significance  
 8 of the Second Amendment’ and we do not consider them ‘instructive.’”<sup>190</sup> “Second,  
 9 because these territorial laws were rarely subject to judicial scrutiny, we do not know the  
 10 basis of their perceived legality . . . . we fail to see how they inform ‘the origins and  
 11 continuing significance of the Amendment.’”<sup>191</sup> “Finally, these territorial restrictions  
 12 deserve little weight because they were—consistent with the transitory nature of  
 13 territorial government—short lived . . . . Thus, they appear more as passing regulatory  
 14 efforts by not-yet-mature jurisdictions on the way to statehood, rather than part of an  
 15 enduring American tradition of state regulation.”<sup>192</sup> One commentator disagrees.<sup>193</sup>  
 16 Even so, the territorial regulations suggest an absence of gun bans during the most  
 17 important historical period.

18           None of the territorial regulations from 1791 to 1868 prohibited a firearm. There  
 19 were no prohibitions on owning firearms of any type. There were no prohibitions on  
 20 keeping a firearm of any type for self-defense, whether in the home or in public. The  
 21 first territorial regulation came approximately 47 years after the Second Amendment (in  
 22 1839) and prohibited the carrying of a firearm in a *concealed* manner in the Florida  
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 25 <sup>189</sup> *Bruen*, 142 S. Ct. at 2154.

26 <sup>190</sup> *Id.* (quoting *Heller*, 554 U.S. at 614).

27 <sup>191</sup> *Bruen*, 142 S. Ct. at 2155 (quoting *Heller*, 554 U.S. at 592).

28 <sup>192</sup> *Id.* (citations omitted).

<sup>193</sup> See Andrew Willinger, *The Territories Under Text, History, and Tradition*, 101 Wash. Univ. L. Rev. (2023), <https://ssrn.com/abstract=4372185>.



Territory. [42]. In other words, for the first 40 years of the nation’s history, the only territorial restriction on firearms, was in the Florida territory taken from Spain in 1819.

In 1853, the New Mexico Territory also adopted a *concealed* carrying prohibition. [58]. In 1854, the Washington Territory prohibited *exhibiting* a pistol in a rude, angry, or threatening manner, reenacting a similar law in 1859. [60, 71]. The Nebraska Territory made it a crime to carry a pistol *with the intent to assault* another person in 1858. [68] The Colorado Territory (in 1862 and again in 1867) and the Montana Territory (in 1864) restricted the *concealed* carrying of a pistol in a city, town, or village. [75, 79, 84]. While these territorial laws do evidence some later restrictions on the manner of carrying firearms in some public places, they do not not evidence a history or tradition of prohibiting any firearms of any type.

**v. California’s First Concealed Carry Law Was a Failure**

In 1863, California’s homicide rate reached “catastrophic levels.”<sup>194</sup> With no Second Amendment analogue in the state constitution, California’s solution was to ban carrying concealed weapons. The experiment failed. In 1870, the legislature repealed the law, because it disarmed the good citizen, but the law was not followed by “the vast majority of roughs, fighting men, and predatory characters,”<sup>195</sup> and the police were “apt to arrest any quiet citizen” with a concealed weapon.<sup>196</sup>

**B. Historical Twins**

*Bruen* concluded that “[n]one of these historical limitations on the right to bear arms approach New York’s proper-cause requirement because none operated to prevent

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<sup>194</sup> Decl. of Randolph Roth, Dkt. 118-8 (“Roth Decl.”), at ¶ 36.

<sup>195</sup> *Id.* at ¶ 37 and n.84 (citing Clayton E. Cramer and Joseph E. Olson, *The Racist Origins of California’s Concealed Weapon Permit Law*, SSRN (Aug. 12, 2016) (quoting *The Carrying of Concealed Weapons*, Daily Alta (San Francisco) California, March 13, 1869, at 2, and *Concealed Deadly Weapons*, Sacramento Daily Union, December 16, 1870, at 2.)).

<sup>196</sup> *Id.*

1 law-abiding citizens with ordinary self-defense needs from carrying arms in public for  
2 that purpose.”<sup>197</sup> The same can be said about California’s magazine ban. To paraphrase  
3 the Supreme Court, none of these historical limitations on the right to bear arms approach  
4 California’s complete ban on magazines able to hold more than 10 rounds. None  
5 operated to prevent law-abiding citizens from possessing as much ammunition as they  
6 thought best.

7 A historical twin is not unimaginable. It could have been the case that the early  
8 states prohibited having large capacity gunpowder sacks, or, they might have prohibited  
9 carrying more than 10 lead bullets. There were no such restrictions. There are no  
10 Founding-era dead ringers or historical twins. Of course, the State does not need to find a  
11 historical twin, but a second cousin twice-removed, is not enough.

## 12 **V. ANALOGUES**

13 Although the State does not identify any historical twins of its restrictions on  
14 magazines, it may not have to. A history and tradition of a relevantly similar firearm  
15 regulation could suffice. After all, it can be argued that removable magazines represent a  
16 dramatic change in technology and the State is attempting to address a modern societal  
17 concern. In such cases, *Bruen* allows a more nuanced approach. On one hand, compared  
18 to muskets of the colonial era, a Glock 17 with its 17-round magazine clearly represents a  
19 dramatic technological advancement. On the other hand, the lever-action repeating  
20 Henry and Winchester rifles popular at the time of the Fourteenth Amendment were  
21 already dramatic technological advancements in firearms. These popular lever-action  
22 rifles had large tubular magazines that held a lot of ammunition and could be fired  
23 multiple times in succession, accurately and quickly. Yet, there are no state prohibitions  
24 on possession or manufacture of these lever-action rifles in the State’s law list.

25 In any event, while California does not need to identify a dead ringer for its  
26

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27  
28 <sup>197</sup> 142 S. Ct. at 2150.

1 magazine ban, “California cannot satisfy the requirement for a closely analogous  
2 historical regulation by reference to any general firearm regulation California might  
3 unearth.”<sup>198</sup>

4 **A. The State’s Best Historic Analogue? A New York City Gunpowder**  
5 **Storage Law Following the Worst City Fire in Colonial America**

6 Asked to identify the best historic analogue to its sweeping prohibition on large  
7 capacity magazines, the State identified a New York City gunpowder storage law  
8 following the worst city fire in Colonial America. With the assistance of scholars who  
9 have studied historic laws for years the State identified a 1784 statute regulating the  
10 amount of gunpowder that could be stored inside a New York City building.<sup>199</sup> Because  
11 the State has identified this as its best analogue, it deserves closer consideration.

12 The gunpowder storage law has nothing to do with gun violence. It was *a fire*  
13 *safety regulation*. Unsurprisingly, the law was enacted after New York City suffered two  
14 great fires, one of which is described as, “The most destructive fire in colonial North  
15 America.”<sup>200</sup> The first fire, in the year 1776, burned much of Manhattan to the ground  
16 and destroyed 493 houses in its path. In 1778, a second fire swept through the city and  
17 destroyed 54 more houses and several warehouses.<sup>201</sup> After these two terrible fires the  
18 New York State legislature responded with a law for New York City limiting the quantity  
19 of gunpowder that a person could store in any one building to 28 pounds. It applied only  
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23 <sup>198</sup> *Baird*, 2023 WL 5763345, at \*8.

24 <sup>199</sup> See Defendant’s Response Brief in Response to the Court’s Order Entered on  
25 February 7, 2023, Dkt. 143, at 1, identifying 1784 Laws of N.Y. 627, chapter 28.

26 <sup>200</sup> New York City Fire Museum, *The Great New York Fire of 1776* (Mar. 21, 2023),  
<https://www.nycfiremuseum.org/greatfire1776> [<https://perma.cc/A3BW-TQRP>].

27 <sup>201</sup> Richard Howe, *Notes on the Great Fires of 1776 and 1778* (2014), The Gotham  
28 Center for New York City History, <https://www.gothamcenter.org/blog/notes-on-the-great-fires-of-1776-and-1778> [<https://perma.cc/WJ4V-3QKP>].

1 to that part of Manhattan from city hall on the south end to one mile north.<sup>202</sup> Gunpowder  
 2 was to be stored in fireproof stone jugs or tin canisters holding no more than 7 pounds  
 3 each. Reinforcing that the law was enacted to prevent fires, it also required gunpowder  
 4 be contained to prevent spills during transport through the streets.<sup>203</sup>

5 There was much the law did not do. It did not limit the total amount of gunpowder  
 6 a person could own or use, as long as quantities over 28 pounds were kept in the public  
 7 magazine or in additional buildings. It placed no limit on the number of lead bullets a  
 8 person could keep or possess. It did not restrict a person from keeping his firearms  
 9 loaded with gunpowder and bullets in his home, business, or when in public. Beyond the  
 10 one mile stretch of lower Manhattan island, the law had no application anywhere else in  
 11 the state. And 28 pounds is a lot of gunpowder. One New York militia soldier was  
 12 required to bring ¼ pound of gunpowder when called to muster.<sup>204</sup> So, 28 pounds of  
 13 gunpowder could outfit 112 militia men. As the State's expert Professor Cornell notes,  
 14 "Twenty to thirty pounds of gunpowder is certainly not an inconsiderable amount."<sup>205</sup>  
 15

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16  
 17 <sup>202</sup> "[I]t shall not be lawful . . . to have or keep any quantity of gun powder exceeding  
 18 twenty-eight pounds weight, in any one place, less than one mile to the northward of the  
 19 city hall . . . except in the public magazine at the Fresh-water . . . ."

20 <sup>203</sup> The law specified, "[a]nd in order to prevent any fatal consequences which may arise,  
 21 from the carriage of gun powder, in and through the streets of the city of new York, by  
 22 carts, carriages, or by hand, or otherways [sic], it shall be in a tight cask, well headed and  
 23 hooped, and shall be put into bags or leather-cases, and intirely [sic] covered therewith,  
 24 so as that none be spilt or scattered in the passage thereof . . . ." 1784 Laws of N.Y at  
 25 628.

26 <sup>204</sup> See Stats. at Large, New York 1867, Chapter X, Title VII, Article 1, §6, at 287 (eff.  
 27 1835) (penalties for militia men ill-equipped) ("[F]or want of two spare flints and a  
 28 knapsack, twenty four cartridges, shot-pouch, powder-horn, twenty balls, and *a quarter of*  
 29 *a pound of powder*, twenty five cents each . . . ."),  
[https://books.google.com/books/content?id=RkkwAQAAMAAJ&pg=PA287&img=1&z](https://books.google.com/books/content?id=RkkwAQAAMAAJ&pg=PA287&img=1&zoom=3&hl=en&bul=1&sig=ACfU3U3ooEDz2oBmZb_g3qythhk8S6UJOg&ci=99%2C102%2C820%2C820&edge=0)  
[oom=3&hl=en&bul=1&sig=ACfU3U3ooEDz2oBmZb\\_g3qythhk8S6UJOg&ci=99%2C102%2C820%2C820&edge=0](https://perma.cc/KS72-L87G) [https://perma.cc/KS72-L87G].

<sup>205</sup> Saul Cornell & Nathan DeNiro, *A Well Regulated Right*, 73 Fordham L. Rev. 487  
 n.173 (2004).

1 For nuanced analogues, the New York City gunpowder storage law fails the why  
 2 and how tests.<sup>206</sup> The “why” of the large capacity magazine ban is to introduce a “critical  
 3 pause” into a mass shooter’s unrelenting attack. The “why” of the historic gunpowder  
 4 storage law is to reduce the risk of building fires. The “how” of the large capacity  
 5 magazine ban is limiting the number of ammunition rounds that can be loaded in a gun  
 6 for self-defense. The “how” of the historic gunpowder storage law burden was  
 7 generously limiting the storage (and not the amount loaded into guns for self-defense) of  
 8 gunpowder for a geographic area smaller than one square mile. In the end, the State’s  
 9 proposed analogue is not relevantly similar.

10 One other gunpowder storage law mentioned by the State which applied only in the  
 11 city of Boston, Massachusetts, fares no better. This was also a *fire* safety regulation—  
 12 nothing more.<sup>207</sup> “The ordinance did not prohibit *carrying* loaded firearms within the  
 13 City of Boston—only leaving them unattended in a building—and . . . this law was for  
 14 the protection of those fighting fires.”<sup>208</sup> In fact, one scholar mused, “Strictly speaking,  
 15 the law did not forbid bringing an unloaded gun into a building, and then loading it when  
 16 inside. So, occupants of homes or businesses remained free to keep loaded guns.”<sup>209</sup>  
 17 Moreover, the State offers no evidence that the Massachusetts law was enforced. A  
 18 search of *Thacher’s Reports*, a collection of reports of criminal cases tried in the City of  
 19 Boston Municipal Court from 1823–1843 reveals no such prosecutions.<sup>210</sup>

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21  
 22 <sup>206</sup> Courts should examine “how and why the regulations burden a law-abiding citizens’  
 right to armed self-defense.” *Bruen*, 142 S. Ct. at 2132-33.

23 <sup>207</sup> *See Renna*, 20-cv-2190-DMS-DEB, 2023 WL 2846937, \*12–13 (citing *Jackson v.*  
 24 *City & Cnty. of San Francisco*, 746 F.3d 953, 963 (9th Cir. 2014) (stating “Boston’s  
 25 firearm-and-gunpowder storage law is historically distinct from the challenged firearm  
 regulation in light of *Heller*”).

26 <sup>208</sup> Clayton E. Cramer and Joseph Edward Olson, *Pistols, Crime, and Public: Safety in*  
*Early America*, 44 Willamette L. Rev. 699, 705 (2008) (emphasis in original).

27 <sup>209</sup> *Id.*

28 <sup>210</sup> *Thacher’s Reports* may be found at <https://www.mass.gov/info-details/historical-massachusetts-cases#1800-1899->.

1 This whole gunpowder storage argument has been raised before and it has been  
 2 rejected before. It was raised a dissent in *Heller* and relied on the same laws of New  
 3 York and Massachusetts, and the same writings of Cornell.<sup>211</sup> The *Heller* majority was  
 4 unimpressed. *Heller* says,

5 The other laws Justice Breyer cites are gunpowder-storage laws  
 6 that he concedes did not clearly prohibit loaded weapons, but  
 7 required only that excess gunpowder be kept in a special  
 8 container or on the top floor of the home. Nothing about those  
 9 fire-safety laws undermines our analysis; they do not remotely  
 burden the right of self-defense as much as an absolute ban on  
 handguns.<sup>212</sup>

10 Applying the same reasoning to this case, the early fire-safety gunpowder storage laws do  
 11 not remotely burden the self-defense right as much as an absolute ban on magazines  
 12 holding more than 10 rounds.

### 13 **B. The State's Historic Analogue No. 2: Concealed Carry Laws**

14 Next, the State turns to historic laws regulating the *concealed* carrying of bowie  
 15 knives, dirks, sword canes, and some pistols, as analogues.

#### 16 **i. Pocket Pistols**

17 Some historic laws prohibited carrying a pocket pistol in a concealed manner. By  
 18 1868, about a dozen states had laws prohibiting carrying concealed pistols. Importantly,  
 19 the concealed carry laws did not prohibit either keeping pistols for all lawful purposes or  
 20 carrying all guns openly. And none included long guns or ammunition containers in their  
 21 restrictions. Pocket pistols were entirely lawful to keep and use at home for self-defense.

22 Prohibiting the concealed carrying of a pistol was constitutionally permissible only  
 23 when a citizen could freely keep and carry the same gun openly. The statutes were often  
 24 tested in court, suggesting that any broad carrying restriction ran close to the  
 25

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26  
 27 <sup>211</sup> *Heller*, 554 U.S. at 684–86 (Breyer, J., dissenting).

28 <sup>212</sup> *Id.* at 631–32.

1 constitutional line. Today’s large capacity magazine ban prohibits carrying magazines in  
2 any manner -- and even more restrictively prohibits simple possession.

3 Historic concealed carry laws for pistols have a different “why” and “how” than do  
4 the State’s large capacity magazine ban. The “why” of a concealed carry law was to  
5 prevent unfair surprise attacks by a person who appeared to be unarmed. The “how” of  
6 the historic concealed carry prohibitions was to proscribe the manner of carrying a pocket  
7 pistol and only when in public. The substantial burden imposed by the large capacity  
8 magazine ban is not analogous to the burden created by a concealed carry restriction for  
9 public carrying of a pocket pistol. Such a history and tradition of concealed carry  
10 prohibitions are not nuanced analogues for California’s magazine ban as they are not  
11 relevantly similar.

12 **ii. Dirks, Daggers, Sword Canes, and Bowie Knives**

13 The State now asks the Court to compare firearms equipped with large capacity  
14 magazines to knives. Undoubtedly, dirks, daggers, and bowie knives are dangerous. But  
15 dirks, daggers, sword canes, and bowie knives were not firearms; they were bladed  
16 instruments. *Bruen* says the state’s burden is to identify a historical *firearm* regulation,  
17 not a knife regulation. In the dissent, knives were cited only where territorial laws also  
18 affected the carrying of pistols, presumably because of the pistols.<sup>213</sup> *Heller* did not  
19 mention knife laws at all in evaluating the District of Columbia’s handgun ban. And the  
20 Supreme Court’s plurality did not mention bowie knives in evaluating Chicago’s  
21 handgun ban, except as an example of Reconstruction-era efforts to disarm African-  
22 Americans.<sup>214</sup> This is not to say that bowie knives are not “arms” imbued with Second  
23

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24  
25 <sup>213</sup> *Id.* at 2186 (Breyer, J. dissenting) (“For example, Georgia made it unlawful to carry,  
26 ‘unless in an open manner and fully exposed to view, any pistol, (except horseman's  
27 pistols,) dirk, sword in a cane, spear, bowie-knife, or any other kind of knives,  
28 manufactured and sold for the purpose of offence and defence.’ Ga. Code § 4413  
(1861).”).

<sup>214</sup> *McDonald*, 561 U.S. at 771.



Amendment protection.<sup>215</sup> Historical knife laws would be relevant in evaluating a modern prohibition on knives. It is simply to say that historical *firearm* regulations are obviously more likely to be relevant analogues for modern *firearm* restrictions.

Even if knife regulations were relevant, they would not help the State much.<sup>216</sup> There were laws restricting bowie knives in some states in the 1800's, but not the vast majority of states. There is also little evidence of actual prosecutions for simply

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<sup>215</sup> See, e.g., David B. Kopel, Clayton E. Cramer and Joseph E. Olson, *Knives and the Second Amendment*, 47 U. Mich. J. L. Reform 167, 168 (2013); Defs.' Compendium of Works, Dkt. 158-2, at 65, 67 ("This Article analyzes Second Amendment protection for the most common 'arm' in the United States – the knife.").

<sup>216</sup> This opinion is shared by two historians. See David B. Kopel and Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. of Legis., Apr. 25, 2023, at 168–69 (2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4393197](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4393197) [<https://perma.cc/P85U-ASTZ>] ("Bans on modern rifles and magazines cannot be rescued by diverting attention away from the legal history of firearms law, and instead pointing to laws about other arms. Dozens of state and territorial legislatures enacted laws about Bowie knives, as well as dirks and daggers. Prohibitory laws for these blades are fewer than the number of bans on carrying handguns, and *Bruen* found the handgun laws insufficient to establish a tradition constricting the Second Amendment.

As for other non-blade impact weapons, the sales and manufacture bans in a minority of states for slungshots and knuckles could be considered as involving arms "not typically possessed by law-abiding citizens for lawful purposes."

Other flexible impact arms, most notably blackjacks, were "typically possessed by law-abiding citizens for lawful purposes," especially by law enforcement officers. Likewise, modern semiautomatic rifles and standard magazines are also highly preferred by today's law enforcement officers.

For blackjacks and sand clubs, only one state, New York, enacted a sales and manufacture ban. That came at a time when the legislature was unencumbered by a Second Amendment enforceable against the states or by a state constitution right to arms. As *Bruen* teaches, a lone eccentric state does not create a national legal tradition.

For every arm surveyed in this article, the mainstream American legal tradition was to limit the mode of carry (no concealed carry), to limit sales to minors (either with bans or requirements for parental permission), and/or to impose extra punishment for use in a crime.

The fact that most states banned concealed carry of Bowie knives is not a precedent to criminalize the mere possession of modern rifles and magazines.").



1 possessing a bowie knife, much less a judicial opinion on constitutionality. One court  
2 observed that a Tennessee bowie knife law was generally disregarded.<sup>217</sup>

3 The argument that a cluster of laws prohibiting the carrying of dangerous knives  
4 could justify a gun ban, lost its wind in *McDonald*. If the regulation of knives was not a  
5 sufficient analogue for restricting handguns in Chicago, neither are regulations of dirks,  
6 daggers, sword canes, and bowie knives useful analogues for prohibiting modern  
7 magazines.

### 8 **C. The State's Historic Analogue No. 3: Guns Set as Traps**

9 Historic laws prohibiting trap guns are proposed as a third analogue by the State.  
10 What the State does not admit or seem to recognize is that “trap guns” are not guns at all.  
11 They are a method by which a gun, any gun, can be set up to fire indiscriminately  
12 through the use of springs, strings, or other atypical triggering mechanism without  
13 needing an operator. Nonetheless, absent from our history is a tradition of trap gun  
14 restrictions in the important years between the 1791 and 1868. The 1771 New Jersey trap  
15 gun law, upon which the State relies, predates the Declaration of Independence, New  
16 Jersey statehood,<sup>218</sup> and the Second Amendment. Ninety-five years passed before a  
17 second restriction on trap gun was enacted and that one applied only to the Utah Territory  
18 (1865). [80]. Within the states, the first regulation on setting a trap gun, was enacted in  
19 Minnesota in 1873. [109]. Two states followed later in 1875 (Michigan) and 1884  
20

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21  
22 <sup>217</sup> See, e.g., *Day v. State*, 37 Tenn. 496, 499 (Tenn. 1858) (“It is a matter of surprise that  
23 these sections of this act, so severe in their penalties, *are so generally disregarded* in our  
24 cities and towns.”) (describing state law prohibiting the concealed carrying of bowie  
knives) (emphasis added).

25 <sup>218</sup> New Jersey was one of the few states that did not have in its state constitution a  
26 provision like the Second Amendment. (Six states do not have provisions protecting a  
27 right to arms in their state constitutions: California, New Jersey, New York, Maryland,  
28 Minnesota, and Iowa.) See David B. Kopel and Clayton E. Cramer, *State Court  
Standards of Review for the Right to Keep and Bear Arms*, 50 Santa Clara L. Rev 1113,  
1145 n.51 (2010).

(Vermont). In other words, trap guns were not prohibited by law in the District of Columbia or 36 of the 37 states (then existing), until 1873. California did not enact its own trap gun law until 1957.<sup>219</sup> Court decisions between 1791 and 1868 recognized that it was entirely lawful to use trap guns (or spring guns, as they were sometimes called) to defend one's property.<sup>220</sup> If this is what a national tradition of trap gun regulation looks like, it is a strange look, indeed.

Claiming trap guns were "dangerous weapons commonly used for criminal behavior and not for self-defense,"<sup>221</sup> the State has a problem with the facts. There is little historical evidence that trap guns were used for criminal behavior. Rather, guns

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<sup>219</sup> See Cal. Fish & Game Code § 2007.

<sup>220</sup> See, e.g., *Gray v. Combs*, 7 J. J. Marsh, 478 (Ky. 1832) (one who sets traps or spring guns to protect valuable property by means of which another is killed while attempting to enter the premises is guilty of no crime); *Loomis v. Terry*, 1837 WL 2808 (N.Y. Sup. Ct. 1837) ("It is not like setting spring guns with public notice of the fact; for even that has been held warrantable as being necessary (*Ilott v. Wilkes*, 3 Barn. & Ald. 304)."); *State v. Moore*, 31 Conn. 479, 479–80 (Conn. 1863) ("Breaking and entering a shop in the night season with intent to steal, is by our law burglary, and the placing of spring guns in such a shop for its defense, would be justified if a burglar should be killed by them."); *Maenner v. Carroll*, 46 Md. 193, 208 (Md. Ct. App. 1877) ("While it is decided that traps, spring-guns, and other dangerous instruments, may be lawfully placed on private grounds, for the purpose of deterring trespassers or catching strange animals doing damage . . ."); see also *Simpson*, 59 Ala. at 18 (citing *Moore*, 31 Conn. at 479) ("The setting a spring-gun on his premises, by the owner, is culpable only because of the intent with which it is done. Unless the public safety is thereby endangered, it is not indictable. If dangerous to the public, it is indictable as a nuisance."); *United States v. Gilliam*, 25 F. Cas. 1319, 1320 and n.2 (D.C. Crim. Ct. 1882) ("The setting of a spring-gun as a protection for property, though not in itself unlawful and indictable, is certainly undeserving of encouragement. . .") (citing English common law and the court of King's Bench, *Ilott v. Wilkes*, 3 Barn. & Ald. 304 ('A trespasser, having knowledge that there are spring-guns in a wood, although he may be ignorant of the particular spots where they are placed, cannot maintain an action for an injury received in consequence of his accidental treading on the latent wire connecting with the gun, and thereby letting it off.')).

<sup>221</sup> Defs' Br. in Resp., Dkt. 145, at 10 (quoting *Oregon Firearms Fed'n, Inc. v. Brown*, No. 2:22-cv-01815-IM, 2022 WL 17454829, at \*13 (D. Or. Dec. 6, 2022), *appeal dismissed*, No. 22-36011, 2022 WL 18956023 (9th Cir. Dec. 12, 2022)).

were set as traps by common people to protect their property from thieves and sometimes for self-defense against burglars. Perhaps just as often trap guns were used to hunt game. Historian and expert witness for the State, Robert Spitzer opines about trap guns: (1) “[t]hose who set gun traps typically did so to defend their places of business, properties, or possessions;” and (2) “opinion was more divided . . . with some arguing that thieves or criminals hurt or killed by the devices had it coming.”<sup>222</sup> So, when the State claims trap guns were used by criminals and not for self-defense, it gets the facts backwards. The how and why of the two types of regulations are not relevantly similar, thus trap gun laws are not useful analogues for prohibiting modern magazines.

**D. The Best Analogue: Laws Requiring Citizens to Keep and Carry Sufficient Bullets and Gunpowder for Service in the Militia**

California ignores Founding-era laws that present the best analogue to its present-day magazine law. These are the manifold early militia laws requiring each citizen, not to limit the amount of ammunition he could keep, but to arm himself with *enough* ammunition: at least 20 rounds.<sup>223</sup>

Government remains fixed on the notion that it alone can decide that anything larger than a 10-round magazine is not “suitable” for a citizen to have. But, there are no analogous cases in our history. There are no cases where American government dictated that lever-action rifles were unsuitable because single shot rifles were good enough, or

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<sup>222</sup> (U.S.D.C. Oregon Dkt. 17-2 at ¶¶ 34–53) (first filed in the instant case).

<sup>223</sup> See, e.g., 1784 Mass. Acts 142; 1786 N. Y. Laws 228; 1785 Va. Statutes at Large 12 (12 Hening c. 1); 1 Stat. 271 (1792) (Militia Act); Herbert L. Osgood, *The American Colonies in the Seventeenth Century*, 499–500 (1904) (explaining that states often required citizens to equip themselves with adequate firearms and ammunition, including between 20 and 24 cartridges at minimum); *Silveira v. Lockyer*, 328 F.3d 567, 586 (9th Cir. 2003) (“Much as building codes today require smoke detectors in the home, a man had to have a bullet mould, a pound of powder, four pounds of lead, and twenty bull<sup>et</sup>s, to be produced when called for by a militia officer.”) (Kleinfeld, J., dissenting).

1 revolvers were unsuitable because derringers were good enough.<sup>224</sup> These choices have  
2 always belonged to the People to decide for themselves how much firepower they need.

3 The right to have firearms for social security was important at the time the  
4 Constitution was adopted. There were many enemies of the young nation. An armed  
5 citizenry provided a much-needed deterrent effect. Early citizens remembered how the  
6 Minutemen of Lexington and Concord, Massachusetts, by assembling as a militia, fought  
7 back against the hostile British march to take away guns and gunpowder in April 1776.

8 During the Nation's founding-era, federal and state governments enacted laws for  
9 the formation and maintenance of citizen militias. Three such statutes are described in  
10 *Miller*.<sup>225</sup> Rather than restricting too much firing capacity, the laws mandated a  
11 minimum firing capacity. These statutes required citizens to arm themselves with arms  
12 and a minimum quantity of bullets and gunpowder, not to disarm themselves. When  
13 Congress passed the Militia Act in 1792,<sup>226</sup> the law required a citizen to be equipped to  
14 fire at least 20 to 24 shots.<sup>227</sup> A 1786 New York law required "no less than Twenty-four  
15 Cartridges," and a 1785 Virginia law required a cartridge box and "four pounds of lead,

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18 <sup>224</sup> "I surveyed the gun regulations in the Duke Historical Database from the early  
19 medieval period through 1885 to see what terminology was used. None of the laws that  
20 prohibit weapons, aside from the Maryland statute above, specifies a gun part or  
21 ammunition case or accoutrements of any kind. Although many present a list of banned  
22 or prohibited weapons – usually without defining them [the assumption is that the reader  
23 knows what they refer to], none of the laws mention cartridge boxes, bullets, barrels, or  
24 other parts of any weapons." Declaration of Dennis Baron, Dkt. 118-2, at ¶ 56.

<sup>225</sup> 307 U.S. 174 (1939)

<sup>226</sup> 1 Stat. 271, 2 Cong. Ch. 33.

<sup>227</sup> "That every citizen so enrolled and notified, shall, within six months thereafter,  
25 provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare  
26 flints, and a knapsack, a pouch with a box therein to contain not less than *twenty-four*  
27 *cartridges*, suited to the bore of his musket or firelock, each cartridge to contain a proper  
28 quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn,  
*twenty balls* suited to the bore of his rifle and a quarter of a pound of powder."  
(Emphasis added).

1 including twenty blind cartridges.” In 1776, Paul Revere’s Minutemen were required to  
2 have 30 bullets and gunpowder.

3 These and other citizen militia laws demonstrate that, contrary to the idea of a  
4 firing-capacity upper limit on the number of rounds permitted, there was a legal  
5 obligation for the average citizen to have at least 20 rounds available for immediate  
6 use.<sup>228</sup> There were no upper limits like § 32310; there were floors and the floors were  
7 well above 10 rounds.<sup>229</sup> California’s large capacity magazine ban is a diametrically  
8 opposed analogue.

9 As one court explained, “[u]nder *Bruen*, the Second Amendment does not ‘forbid  
10 all laws other than those that *actually existed* at or around the time of the Second  
11 Amendment’s adoption,’ but rather ‘the Second Amendment must, at most, forbid laws  
12 that could not have existed under the understanding of the right to bear arms that  
13 prevailed at the time.’”<sup>230</sup> California’s large capacity magazine ban did not exist and  
14 could not have existed under the understanding of the Second Amendment at the time of  
15 the Founding. This is clear because militia laws of the federal and state governments  
16 required citizens to keep and carry more ammunition supplies than 10 rounds. A  
17 prohibition like § 32310 would have been impossible to enforce and runs contrary to  
18 legal commands for militia readiness.

## 19 **VI. CONCLUSION**

20 Removable firearm magazines of all sizes are necessary components of  
21 semiautomatic firearms. Therefore, magazines come within the text of the constitutional  
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23  
24 <sup>228</sup> *Teixeira v. Cty. Of Alameda*, 873 F.3d 670, 685 (9th Cir. 2017) (citing Joyce Lee  
25 Malcolm, *To Keep and Bear Arms* 139 (1994)) (“the colonial militia played a primarily  
26 defensive role . . . . The dangers all the colonies faced . . . were so great that not only  
27 militia members but all householders were ordered to be armed.”).

28 <sup>229</sup> *Duncan*, 366 F. Supp. at 1150.

<sup>230</sup> Def’s Br. in Resp., Dkt. 142 at 16 (quoting *United States v. Kelly*, No. 3:22-cr-00037,  
2022 U.S. Dist. LEXIS 215189, at \*14 n.7 (M.D. Tenn. Nov. 16, 2022)).

1 declaration that the right to keep and bear arms shall not be infringed. Because millions  
2 of removable firearm magazines able to hold between 10 and 30 rounds are commonly  
3 owned by law-abiding citizens for lawful purposes, including self-defense, and because  
4 they are reasonably related to service in the militia, the magazines are presumptively  
5 within the protection of the Second Amendment. There is no American history or  
6 tradition of regulating firearms based on the number of rounds they can shoot, or of  
7 regulating the amount of ammunition that can be kept and carried. The best analogue that  
8 can be drawn from historical gun laws are the early militia equipment regulations that  
9 required all able-bodied citizens to equip themselves with a gun and a minimum amount  
10 of ammunition in excess of 10 rounds.

11 Because the State did not succeed in justifying its sweeping ban and dispossession  
12 mandate with a relevantly similar historical analogue, California Penal Code § 32310, as  
13 amended by Proposition 63, is hereby declared to be unconstitutional in its entirety and  
14 shall be enjoined. At this time, the Court's declaration does not reach the definition of a  
15 large capacity magazine in California Penal Code § 16740 where it is used in other parts  
16 of the Penal Code to define other gun-related crimes or enhance criminal penalties.

17 One government solution to a few mad men with guns is a law that makes into  
18 criminals responsible, law-abiding people wanting larger magazines simply to protect  
19 themselves. The history and tradition of the Second Amendment clearly supports state  
20 laws against the use or misuse of firearms with unlawful intent, but not the disarmament  
21 of the law-abiding citizen. That kind of a solution is an infringement on the  
22 Constitutional right of citizens to keep and bear arms. The adoption of the Second  
23 Amendment was a freedom calculus decided long ago by our first citizens who cherished  
24 individual freedom with its risks more than the subservient security of a British ruler or  
25 the smothering safety of domestic lawmakers. The freedom they fought for was worth  
26 fighting for then, and that freedom is entitled to be preserved still.

27 The Attorney General respectfully requests a stay of any judgment in Plaintiffs'  
28 favor for a sufficient period to seek a stay from the Court of Appeals. Dkt. 118 at 61–63;

1 Dkt. 142 at 25. That request is granted. Therefore, the enforcement of the injunction is  
2 hereby stayed for ten days.

3 **IT IS HEREBY ORDERED** that:

4 1. Defendant Attorney General Rob Bonta, and his officers, agents, servants,  
5 employees, and attorneys, and those persons in active concert or participation with him,  
6 and those duly sworn state peace officers and federal law enforcement officers who gain  
7 knowledge of this injunction order, or know of the existence of this injunction order, are  
8 enjoined from enforcing California Penal Code § 32310.

9 2. Defendant Rob Bonta shall provide, by personal service or otherwise, actual  
10 notice of this order to all law enforcement personnel who are responsible for  
11 implementing or enforcing the enjoined statute.

12 3. This injunction is stayed for ten (10) days from the date of this Order.

13 **IT IS SO ORDERED.**

14 Date: September 22, 2023

15   
16 HON. ROGER T. BENITEZ  
17 United States District Judge  
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## **EXHIBIT 2**

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10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13  
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,

17 v.

**REVISED EXPERT REPORT OF  
DR. LOUIS KLAREVAS**

18  
19 **XAVIER BECERRA, in his official  
capacity as Attorney General of the  
20 State of California, et al.,**

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                                   **EXPERT REPORT OF DR. LOUIS KLAREVAS**

2       **I.    ASSIGNMENT**

3           I was retained by counsel for the Defendant Xavier Becerra, in his official  
4   capacity as Attorney General of California, for the purposes of providing an expert  
5   opinion on large-capacity magazines and mass shootings.

6       **II.   QUALIFICATIONS AND BACKGROUND**

7           I am a security policy analyst and, currently, Associate Lecturer of Global  
8   Affairs at the University of Massachusetts–Boston. I am also the author of  
9   *Rampage Nation: Securing America from Mass Shootings* (Prometheus 2016), one  
10   of the most comprehensive studies on gun massacres in the United States.

11          I am a political scientist by training, with a B.A. from the University of  
12   Pennsylvania and a Ph.D. from American University. My most recent research  
13   examines the nexus between American public safety and large-scale gun violence.

14          During the course of my nearly 20-year career as an academic, I have served  
15   on the faculties of the George Washington University, the City University of New  
16   York, and New York University. At New York University, I founded and  
17   coordinated the graduate concentration in Transnational Security. I have also  
18   served as a Defense Analysis Research Fellow at the London School of Economics  
19   and Political Science and as United States Senior Fulbright Scholar in Security  
20   Studies at the University of Macedonia.

21          In addition to having made well over 100 media and public speaking  
22   appearances, I am the author or co-author of more than 20 scholarly articles and  
23   over 70 commentary pieces. My most recent research project (undertaken in  
24   collaboration with Prof. David Hemenway of Harvard University) assesses the  
25   effectiveness of restrictions on large-capacity magazines in reducing gun  
26   massacres.

27          Last year, I served on a team of experts, coordinated through Johns Hopkins  
28   University, tasked with examining the implications of allowing guns on college

1 campuses. Furthermore, I was one of 32 experts surveyed by the *New York Times*  
2 for a review of proposals aimed at curbing gun violence in the United States.<sup>1</sup>

3 Besides the present case, I have been retained by the California Attorney  
4 General's office in *Wiese v. Becerra*, Case Number 2:17-cv-00903-WBS-KJN,  
5 Eastern District of California, Sacramento Division. *Wiese* is similar to the present  
6 case in that it also involves a challenge against California's regulation of large-  
7 capacity magazines. Earlier this year, I served as an expert for the State of  
8 Colorado, as it defended a legal challenge to its ban on large-capacity magazines in  
9 *Rocky Mountain Gun Owners, et al. v. Hickenlooper*, Case Number 2013CV33879,  
10 District Court, City and County of Denver, Colorado. This is the only time that I  
11 have testified or been deposed in a legal proceeding in the past five years. I have  
12 also provided consultative services to the United States Institute of Peace and the  
13 Federal Bureau of Investigation.

14 A more detailed list of my credentials and professional experiences can be  
15 found in my curriculum vitae, which is attached as Appendix A.

### 16 **III. RETENTION AND COMPENSATION**

17 I am being compensated for my time in this case on an hourly basis at a rate of  
18 \$300 per hour. My compensation is not contingent on the results of my analysis or  
19 the substance of my testimony.

### 20 **IV. BASIS FOR OPINION AND MATERIAL CONSIDERED**

21 My opinion is based on the pleadings filed in this case, including the Court's  
22 Order of June 29, 2017, granting a temporary injunction, as well as the materials  
23 discussed in this report, including the resources cited in the footnotes and the data  
24 presented in Appendix B.

25  
26 <sup>1</sup> Quoctrung Bui and Margaret Sanger-Katz, "How to Prevent Gun Deaths? Where  
27 Experts and the Public Agree," *New York Times*, January 10, 2017, available at  
28 [https://www.nytimes.com/interactive/2017/01/10/upshot/How-to-Prevent-Gun-](https://www.nytimes.com/interactive/2017/01/10/upshot/How-to-Prevent-Gun-Deaths-The-Views-of-Experts-and-the-Public.html)  
[Deaths-The-Views-of-Experts-and-the-Public.html](https://www.nytimes.com/interactive/2017/01/10/upshot/How-to-Prevent-Gun-Deaths-The-Views-of-Experts-and-the-Public.html) (last accessed October 4, 2017).

1 **V. OPINION**

2 It is my professional opinion, based upon my extensive review and analysis of  
 3 data from the past five decades, that: (1) gun massacres presently pose the deadliest  
 4 threat to the safety and security of American society, and the problem is growing;  
 5 (2) gun massacres involving large-capacity magazines, on average, have resulted in  
 6 a greater loss of life than similar incidents that did not involve large-capacity  
 7 magazines; and (3) jurisdictions where bans on the possession of large-capacity  
 8 magazines were in effect experienced fewer gun massacres, per capita, than  
 9 jurisdictions where such bans were not in effect. As a result, restrictions on LCMs  
 10 have the potential to significantly reduce the number of lives lost in mass  
 11 shootings.<sup>2</sup>

12 **A. Gun Massacres Are a Growing Threat to Public Safety**

13 In 1984, an individual armed with, among other firearms, an Uzi assault  
 14 weapon walked into a McDonald's restaurant in San Ysidro, California, and  
 15 murdered 21 people, making it the deadliest mass shooting in American history at  
 16 the time. It was a tragic marker that was short-lived, as the United States  
 17 experienced several deadlier shootings in the years that followed: 23 people killed  
 18 in a gun rampage in Killeen, Texas, in 1991; 32 people killed in a gun rampage at

19 <sup>2</sup> In my book *Rampage Nation*, I defined a mass shooting as "any violent attack that  
 20 results in four or more individuals incurring gunshot wounds." I then differentiated  
 21 between three different categories of mass shooting: (1) Nonfatal are those mass  
 22 shootings in which no one dies; (2) Fatal are those mass shootings in which at least  
 23 one victim dies; and (3) High-Fatality are those mass shootings in which six or  
 24 more victims die. Throughout my book and in this report, I use the terms "high-  
 25 fatality mass shooting" and "gun massacre" interchangeably. Of the three  
 26 categories of mass shooting, gun massacres are the deadliest, resulting in the  
 27 highest fatality tolls per individual incidents. Given that gun massacres are the  
 28 most lethal and most disturbing, my original dataset in *Rampage Nation* focused on  
 and surveyed all known gun massacres in the United States from 1966-2015. Louis  
 Klarevas, *Rampage Nation: Securing America from Mass Shootings* 47-48  
 (Prometheus 2016).

1 Virginia Tech in Blacksburg, Virginia, in 2007; 27 people killed, including 20 first-  
2 graders, in a gun rampage in Newtown, Connecticut, in 2012; 49 people killed in a  
3 gun rampage in Orlando, Florida. This year, the United States reached a new  
4 milestone when a gunman attacked a crowd of concert-attendees in Las Vegas,  
5 Nevada, murdering an unprecedented 58 people in a single shooting. All six  
6 massacres had one factor in common: the perpetrator used a semiautomatic firearm  
7 armed with an ammunition-feeding device holding more than 10 bullets.<sup>3</sup> Such  
8 ammunition-feeding devices are frequently referred to as large-capacity magazines  
9 (LCMs).<sup>4</sup>

10 In the past decade, gun massacres—like the Newtown, Orlando, Las Vegas,  
11 and Sutherland Springs rampages—have been the deadliest individual acts of  
12 violence in the United States. In fact, every single intentional act of violence in the  
13 past decade that has claimed ten or more lives has been a mass shooting (*see* App.  
14 B, tbl. 1), making gun attacks the greatest and most credible threat to the security  
15 and safety of American society in the present era.

16 In preparation for my book *Rampage Nation*, I assembled 50 years of data  
17 capturing all known gun massacres in the United States.<sup>5</sup> Since 1968, there have  
18

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19 <sup>3</sup> App. B, tbl. 2.

20 <sup>4</sup> Magazines can come in a variety of capacities, including but not limited to 5, 8,  
21 10, 15, 17, 20, 30, 40, 50, and even 100 rounds. The definition of “large-capacity  
22 magazine” varies by state. For instance, California and Connecticut define them as  
23 ammunition-feeding devices holding more than 10 bullets, whereas Colorado and  
24 New Jersey define them as ammunition-feeding devices holding more than 15  
25 bullets. *See* Law Center to Prevent Gun Violence, *Large Capacity Magazines*,  
26 available at [http://smartgunlaws.org/gun-laws/policy-areas/classes-of-](http://smartgunlaws.org/gun-laws/policy-areas/classes-of-weapons/large-capacity-magazines)  
27 weapons/large-capacity-magazines (last accessed October 4, 2017). For purposes  
28 of this report, unless otherwise stated, LCMs will hereinafter refer to magazines  
with a capacity greater than 10 rounds.

<sup>5</sup> My book, which was published in 2016, covered the 50-year period of 1966-2015.  
In preparation of this report, I have updated the dataset of gun massacres to cover

1 been a total of 114 gun massacres, resulting in the loss of a combined 1,035 lives.  
2 *See* App. B, tbl. 2 & figs. 1-2. The data show that the past decade (2008-2017) has  
3 been the worst on record, accounting for nearly one-third of all gun massacre  
4 incidents from the past five decades (37 out of 114) and over 40 percent of all  
5 deaths lost in such high-fatality mass shootings (428 out of 1,035).<sup>6</sup> In fact, this  
6 past year (2017) is the deadliest year of the past 50 years, with 100 people dying in  
7 gun massacres.<sup>7</sup> In other words, mass shootings pose a grave threat to the United  
8 States, and the threat is growing.

9 **B. The Use of LCMs Is a Major Factor in the Rise of Gun**  
10 **Massacre Violence**

11 A review of the data from the past 50 years indicates that gun massacres have  
12 grown in terms of frequency and lethality. The data also point to another striking  
13 pattern: the use of LCMs in the commission of gun massacres has risen in vast  
14 proportions. *See* App. B, tbl. 2 & figs. 3-4.

15 A comparison of the ten-year period of 1968-1977 with the most recent  
16 decade of 2008-2017 shows that the number of gun massacres involving LCMs has  
17 increased eight-fold, from three to 24. Even more disturbing, the number of deaths  
18 attributable to LCM-involving gun massacres has jumped over 17-fold between the  
19 same two ten-year periods, from 19 to 330. Indeed, the 24 LCM-involving gun  
20 massacres from the past decade account for 45 percent of all LCM-involving gun  
21 massacres since 1968, and the 330 deaths attributable to the 24 incidents of the past  
22 decade account for 55 percent of all deaths resulting from LCM-involving gun  
23 massacres since 1968. To present the data in another manner, between 1968-1977,  
24 only 17 percent of gun massacres involved LCMs, and those shootings accounted

25 the 50-year period from 1968 to 2017.

26 <sup>6</sup> App. B, tbl. 2 & figs. 1-2.

27 <sup>7</sup> *Id.*



1 for only 16 percent of all gun massacre fatalities from that decade. By contrast,  
2 between 2008-2017, 65 percent of gun massacres involved LCMs, and those  
3 shootings accounted for 77 percent of all gun massacre fatalities from that decade.  
4 These are gigantic increases of 282 percent and 381 percent, respectively.<sup>8</sup>

5 LCMs provide multiple advantages to active shooters. Offensively, LCMs  
6 increase kill potential. Basically, the more bullets a gunman can fire at a target, the  
7 more potential wounds he can inflict. Furthermore, the more bullets that strike a  
8 victim, the higher the odds that that person will die. There are two forces that allow  
9 LCMs to increase kill potential: rapid-fire capability and multiple-impact  
10 capability.

11 When inserted into either a semiautomatic or fully-automatic weapon, an  
12 LCM facilitates the ability of an active shooter to fire a large number of rounds at  
13 an extremely quick rate. This phenomenon—rapid-fire capability—comes in handy  
14 when a target is in a gunman's line of sight for only a few seconds. For example,  
15 rapid-fire capability allows a decent shooter to fire three rounds per second with a  
16 semiautomatic firearm and ten rounds per second with an automatic firearm. That  
17 results in numerous chances to hit a target in a very short window of opportunity.

18 LCMs also facilitate the ability of a shooter to strike a human target with  
19 more than one round. This phenomenon—multiple-impact capability—increases  
20 the chances that the victim, when struck by multiple rounds, will die. At least two  
21 separate studies have found that, when compared to the fatality rates of gunshot  
22 wound victims who were hit by only a single bullet, the fatality rates of those  
23 victims hit by more than one bullet were over 60 percent higher.<sup>9</sup> The implication

24  
25 <sup>8</sup> App. B, tbl. 2 & figs. 3-4.

26 <sup>9</sup> Daniel W. Webster, et al., "Epidemiologic Changes in Gunshot Wounds in  
27 Washington, DC, 1983-1990," 127 *Archives of Surgery* 694-698 (June 1992); and  
28 Christopher S. Koper & Jeffrey A. Roth, The Impact of the 1994 Federal Assault  
Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome

1 is straightforward: being able to strike human targets with more than one bullet  
2 increases the shooter's chances of killing his victims. In essence, LCMs are force  
3 multipliers when it comes to kill potential—and the evidence from gun massacres  
4 supports this commonsense conclusion.

5 Of the 114 gun massacres since 1968, 53 involved LCMs, resulting in a  
6 cumulative 600 deaths. See App. B, tbl. 2 & fig. 5. The average death toll for the  
7 53 gun massacres involving LCMs is 11.32 fatalities per shooting.<sup>10</sup> By contrast,  
8 the average death toll for the 61 incidents for which there is no evidence of LCM  
9 usage is 7.13 fatalities per shooting.<sup>11</sup> In other words, the use of LCMs in  
10 massacres resulted in a 59 percent increase in fatalities per incident.<sup>12</sup> In the past

11 Measures and Some Lessons for Policy Evaluation, 17 *Journal of Quantitative*  
12 *Criminology* 33-74 (March 2001); see also, Angela Sauaia, et al., Fatality and  
13 Severity of Firearm Injuries in a Denver Trauma Center, 2000-2013, 315 *J. of the*  
14 *Am. Med. Ass'n* 2465-2467 (June 14, 2015).

15 <sup>10</sup> App. B, tbl. 2 & fig. 5.

16 <sup>11</sup> *Id.* T-tests confirm that the differences in death tolls by LCM status are  
17 statistically significant ( $p < .01$  level). The difference remained statistically  
18 significant ( $p < .01$  level) regardless of whether non-LCM incidents were limited to  
19 only those that did not involve LCMs or also included incidents for which the LCM  
20 status was unknown.

21 <sup>12</sup> The standard methodology is to attribute all deaths in LCM-involving mass  
22 shootings to the use of LCMs and to treat cases for which the status of LCM usage  
23 is unknown as incidents not involving LCMs. See Gary Kleck, Large-Capacity  
24 Magazines and the Casualty Counts in Mass Shootings, 17 *Justice Research &*  
25 *Policy* 28-47 (June 2016). Therefore, the calculation of the 11.32 mean average is  
26 determined by dividing the total number of gun massacres involving LCMs (53)  
27 into the total number of deaths resulting from those incidents (600). App. B, tbl. 2  
28 & fig. 5. However, some of the people murdered in five of the 53 LCM-involving  
gun massacres were shot and killed by firearms that were not LCM-capable. When  
these five shootings are adjusted to reflect only deaths that were the result of LCM-  
capable firearms—San Ysidro (19 out of 21 deaths), Littleton (5 out of 13 deaths),  
Kirkwood (5 out of 6 deaths), Aurora (10 out of 12 deaths), and Newtown (26 out  
of 27 deaths)—the cumulative death toll decreases to 586. This adjustment drops  
the average death toll per LCM-involving incident to 11.06 fatalities, which in turn

1 decade, the difference is even more pronounced: 7.54 versus 13.75 deaths per  
2 incident.<sup>13</sup> This is a 82 percent increase in the average death toll, attributed to the  
3 use of LCMs. Moreover, since 1968, LCMs have been used in 74 percent of all  
4 gun massacres with 10 or more deaths, as well as in 100 percent of all gun  
5 massacres with 20 or more deaths—establishing a relationship between LCMs and  
6 the deadliest gun massacres.<sup>14</sup>

7 In addition to the offensive advantage that LCMs provide, there is the  
8 advantage of extended cover. During an active shooting, perpetrators are either  
9 firing their guns or not firing their guns. While pulling the trigger, it is extremely  
10 difficult for those in harm's way to take successful defensive maneuvers. But if  
11 gunmen run out of bullets, there is a lull in the shootings. This precious down-time  
12 affords those in the line of fire with a chance to flee, hide, or fight back.

13 There are countless examples of individuals fleeing or taking cover while  
14 active shooters paused to reload. For instance, in 2012, nine first-graders at Sandy  
15 Hook Elementary School in Newtown, Connecticut, literally pushed their attacker  
16 aside as he was swapping out magazines, allowing them to escape from their  
17

18 results in a 55-percent increase (as opposed to a 59-percent increase) in deaths per  
19 incident attributed to the use of LCMs. The revised fatality attributions are based  
20 on my review of official government documents and autopsy reports pertaining to  
21 the three respective mass shootings. Furthermore, the calculation of the 7.13 mean  
22 average is determined by dividing the number of incidents for which the status of  
23 LCM usage was either none or unknown (61) into the total number of deaths  
24 resulting from those incidents (435). However, removing the nine cases wherein  
25 the status of LCM usage is unknown from the set of 61 total cases results in 52  
26 incidents and 373 cumulative fatalities. This adjustment decreases the average  
27 death toll per non-LCM-involving incident to 7.17 fatalities, which in turn results in  
28 a 58 percent increase (as opposed to a 59 percent increase) in deaths per incident  
attributed to the use of LCMs. App. B, tbl. 2 & fig. 5.

<sup>13</sup> App. B, tbl. 2 & figs. 1-5.

<sup>14</sup> App. B, tbl. 2.

1 classroom and dash to safety.<sup>15</sup> There is also the possibility that someone will rush  
2 a rampage gunman and try to tackle him (or at the very least try to wrestle his  
3 weapon away from him) while he pauses to reload.<sup>16</sup> In recent history, there have  
4 been numerous instances of active shooters being physically confronted by  
5 unarmed civilians while reloading, bringing their gun attacks to an abrupt end. The  
6 following list is just a sampling of examples.<sup>17</sup>

7  
8 <sup>15</sup> See Klarevas, *Rampage Nation*, *supra* note 2, at 22.

9 <sup>16</sup> The longer a shooter can fire without interruption, the longer he can keep  
10 potential defenders at bay. The longer potential defenders are kept from physically  
11 confronting a gunman, the more opportunity there is for the shooter to inflict  
12 damage.

13 <sup>17</sup> See Rich Schapiro, "LIRR Massacre 20 Years Ago: 'I Was Lucky,' Says Hero  
14 Who Stopped Murderer," *New York Daily News*, December 7, 2013, *available at*  
15 [http://www.nydailynews.com/new-york/nyc-crime/lirr-massacre-20-years-lucky-](http://www.nydailynews.com/new-york/nyc-crime/lirr-massacre-20-years-lucky-hero-stopped-murderer-article-1.1540846)  
16 [hero-stopped-murderer-article-1.1540846](http://www.nydailynews.com/new-york/nyc-crime/lirr-massacre-20-years-lucky-hero-stopped-murderer-article-1.1540846) (last accessed October 4, 2017); *see also*  
17 Eric Schmitt, "Gunman Shoots at White House from Sidewalk," *New York Times*,  
18 October 30, 1994, *available at* [http://www.nytimes.com/1994/10/30/us/gunman-](http://www.nytimes.com/1994/10/30/us/gunman-shoots-at-white-house-from-sidewalk.html)  
19 [shoots-at-white-house-from-sidewalk.html](http://www.nytimes.com/1994/10/30/us/gunman-shoots-at-white-house-from-sidewalk.html) (last accessed October 4, 2017); *see also*  
20 Timothy Egan, "Oregon Student Held in 3 Killings; One Dead, 23 Hurt at His  
21 School," *New York Times*, May 22, 1998, *available at* [http://www.nytimes.com/](http://www.nytimes.com/1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-dead-23-hurt-his.html)  
22 [1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-](http://www.nytimes.com/1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-dead-23-hurt-his.html)  
23 [dead-23-hurt-his.html](http://www.nytimes.com/1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-dead-23-hurt-his.html) (last accessed October 4, 2017); *see also* Ken Ritter, "Trial  
24 Begins in Las Vegas Casino Gunfire Case," *San Diego Union-Tribune*, July 7, 2009,  
25 *available at* [http://www.sandiegouniontribune.com/sdut-us-casino-shooting-trial-](http://www.sandiegouniontribune.com/sdut-us-casino-shooting-trial-070709-2009jul07-story.html)  
26 [070709-2009jul07-story.html](http://www.sandiegouniontribune.com/sdut-us-casino-shooting-trial-070709-2009jul07-story.html) (last accessed October 4, 2017); *see also* "Capitol  
27 Gunfire Suspect Tried Reloading," *Huntsville Item*, January 22, 2010, *available at*  
28 [http://www.itemonline.com/news/local\\_news/report-capitol-gunfire-suspect-tried-](http://www.itemonline.com/news/local_news/report-capitol-gunfire-suspect-tried-reloading/article_7f321cc6-170e-578c-928f-fbc702f1228a.html)  
[reloading/article\\_7f321cc6-170e-578c-928f-fbc702f1228a.html](http://www.itemonline.com/news/local_news/report-capitol-gunfire-suspect-tried-reloading/article_7f321cc6-170e-578c-928f-fbc702f1228a.html) (last accessed  
October 4, 2017); *see also* Adam Nagourney, "A Single, Terrifying Moment: Shots  
Fired, a Scuffle and Some Luck," *New York Times*, January 9, 2011, *available at*  
<http://www.nytimes.com/2011/01/10/us/10reconstruct.html> (last accessed October  
4, 2017); *see also* Joe Kemp, "Student Hailed Hero for Tackling Gunman Who  
Opened Fire in Seattle Pacific University, Killing One," *New York Daily News*,  
June 6, 2014, *available at* [http://www.nydailynews.com/news/crime/student-hailed-](http://www.nydailynews.com/news/crime/student-hailed-hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-1.1819485)  
[hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-](http://www.nydailynews.com/news/crime/student-hailed-hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-1.1819485)  
[1.1819485](http://www.nydailynews.com/news/crime/student-hailed-hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-1.1819485) (last accessed October 4, 2017).

**Examples of Active Shooters Who Were Physically  
Confronted While Reloading**

Date	Perpetrator	Target	Location
December 7, 1993	Colin Ferguson	Long Island Rail Road	Garden City, NY
October 29, 1994	Francisco Duran	White House	Washington, DC
May 21, 1998	Kipland Kinkel	Thurston High School	Springfield, OR
July 6, 2007	Steven Zegrean	New York-New York Casino	Las Vegas, NV
January 21, 2010	Fausto Cardenas	Texas State Capitol	Austin, TX
January 8, 2011	Jared Loughner	Rep. Gabrielle Giffords Event	Tucson, AZ
June 5, 2014	Aaron Ybarra	Seattle Pacific University	Seattle, WA

**C. Restrictions on LCMs Result in Fewer Gun Massacres**

In light of the growing threat posed by rampage violence, legislatures have enacted measures in an effort to reduce the carnage of mass shootings. Prominent among these measures are restrictions on LCMs. There are at least two rationales for restricting magazine capacity. First, because LCMs, on average, produce higher death tolls in gun massacres, limiting magazine capacity aims to reduce the loss of life attributable to the increased kill potential of LCMs. Second, because LCMs allow rampage gunmen to fire more bullets without interruption, resulting in fewer opportunities for potential victims to take life-saving measures, limiting magazine capacity aims to create conditions which force mass shooters to pause in order to reload fresh magazines. This, in turn, provides authorities and civilians with precious seconds that can be exploited to escape, seek cover, or take other defensive measures, including attacking the gunmen.

In 1994, the United States enacted the Federal Assault Weapons Ban (AWB). Pub. L. No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996-2010 (codified as

1 former 18 U.S.C. § 922(v), (w)(1) (1994)). The law, which was in effect for only a  
2 ten-year period before sun-setting, regulated certain firearms and their components.  
3 Among its provisions, the AWB prohibited the manufacture, sale, transfer, or  
4 possession of *new* magazines with a capacity greater than 10 rounds. *Id.*<sup>18</sup> With  
5 regard to the frequency and lethality of gun massacres, the AWB clearly had a  
6 positive impact in reducing the number and carnage of such shootings.

7 In the 10-year period prior to the AWB (September 13, 1984-September 12,  
8 1994), there were a total of eight gun massacres involving magazines with a  
9 capacity greater than 10 rounds. *See* App. B, tbl. 2 & fig. 6. These eight gun  
10 massacres claimed a combined 73 lives. During the 10-year period the AWB was  
11 in effect (September 13, 1994-September 12, 2004), there were six gun massacres  
12 involving magazines with a capacity greater than 10 rounds. These six gun  
13 massacres claimed a combined 50 lives. In the ten-year period immediately  
14 following the expiration of the AWB (September 13, 2004-September 12, 2014),  
15 there were 24 gun massacres involving magazines with a capacity greater than 10  
16 rounds. These 24 gun massacres claimed a combined 230 lives.<sup>19</sup>

17 In terms of incidents, the AWB ushered in a period marked by a 25-percent  
18 decrease in the number of gun massacres involving magazines with a capacity  
19 greater than 10 rounds. In contrast, the decade following the ban was marked by a  
20 300-percent increase in the number of gun massacres involving magazines with a  
21 capacity greater than 10 rounds. In terms of fatalities, the AWB ushered in a period  
22 marked by a 32 percent decrease in the cumulative number of lives lost in gun  
23 massacres involving magazines with a capacity greater than 10 rounds. In contrast,  
24

25 <sup>18</sup> Magazines lawfully in circulation prior to the AWB's date of effect (September  
26 13, 1994) were exempted (i.e., grandfathered) from the ban. Former 18 U.S.C.  
27 § 922 (v)(2) (1994).

28 <sup>19</sup> App. B, tbl. 2 & fig. 6.



1 the decade following the ban was marked by a 360 percent increase in the  
 2 cumulative number of lives lost in gun massacres involving magazines with a  
 3 capacity greater than 10 rounds.<sup>20</sup>

4 Since 1990, several states have also enacted restrictions on LCMs,  
 5 predominantly in an effort to reduce the loss of life in mass shootings.<sup>21</sup> On March  
 6 30, 1990, New Jersey became the first state to regulate LCMs. Seven states and the  
 7 District of Columbia have since followed suit: Hawaii (July 1, 1992), Maryland  
 8 (June 1, 1994), Massachusetts (July 23, 1998), California (January 1, 2000), New  
 9 York (November 1, 2000), Washington, D.C. (March 31, 2009), Connecticut (April  
 10 4, 2013), and Colorado (July 1, 2013).<sup>22</sup>

11  
 12 <sup>20</sup> *Id.* In terms of all gun massacres, regardless of whether or not the shootings  
 13 involved LCMs, patterns in the same directions were noted. For instance, the period  
 14 of the AWB was marked by a 37 percent decrease in gun massacre incidents and a  
 15 43 percent decrease in gun massacre deaths, when compared to the 10-year period  
 16 immediately preceding the AWB. By contrast, the 10-year period immediately  
 17 following the AWB was marked by a 183 percent increase in gun massacre  
 18 incidents and a 239 percent increase in gun massacre deaths, when compared to the  
 19 decade of the AWB. *See Klarevas, Rampage Nation, supra* note 2, at 242.

20 <sup>21</sup> For a review of state laws that regulate LCMs, *see* Law Center to Prevent Gun  
 21 Violence, Large Capacity Magazines, *supra* note 1. States differ on the  
 22 ammunition-capacity threshold of LCMs. California, Connecticut, Hawaii,  
 23 Maryland, Massachusetts, New Jersey, and Washington, D.C., define LCMs as  
 24 ammunition feeding devices holding more than 10 bullets, whereas Colorado and  
 25 New Jersey define LCMs as ammunition feeding devices holding more than 15  
 26 bullets. States also differ on whether to exempt LCMs that were in circulation or  
 27 owned prior to their respective bans going into effect—a practice known as  
 28 “grandfathering.” Colorado, Connecticut, Maryland Massachusetts grandfather  
 pre-ban LCMs. Hawaii, New Jersey, New York, and Washington, D.C., do not  
 grandfather pre-ban LCMs. Pursuant to a preliminary injunction issued by the  
 court in the current matter, California is prohibited from enforcing a law that would  
 prohibit LCMs that were legally possessed prior to January 1, 2000. If the  
 injunction is lifted, California would join Hawaii, New Jersey, New York, and  
 Washington, D.C. in not grandfathering previously-owned LCMs. *Id.*

<sup>22</sup> Through a referendum on Proposition 63 (November 8, 2016), California voters



1 In the field of epidemiology, a common method for assessing the impact of  
2 laws and policies is to measure the rate of onset of new cases of a problem,  
3 comparing the rate when and where the laws and policies were in effect against the  
4 rate when and where the laws and policies were not in effect. This measure, known  
5 as the incidence rate, allows public health experts and criminologists to identify  
6 discernable differences, per capita, over a period of time. Relevant to the present  
7 case, calculating incidence rates across jurisdictions, in a manner that accounts for  
8 whether or not LCM bans were in effect during the period of observation, allows  
9 for the assessment of the effectiveness of such bans. In addition, fatality rates—the  
10 number of deaths, per capita, that result from particular activities across different  
11 jurisdictions—also provide insights into the impact of LCM bans on gun  
12 massacres.<sup>23</sup>

13 Since 1990, when the first LCM ban took effect in New Jersey, there have  
14 been 69 gun massacres in the United States.<sup>24</sup> Calculating gun massacre incidence  
15 rates for the time-period 1990-2017, across jurisdictions with and without bans on  
16 the possession of LCMs, reveals that the enactment of an LCM ban resulted in an

17  
18 decided to enhance their existing regulations on LCMs by prohibiting the  
19 ownership of all ammunition magazines with a capacity greater than 10 bullets,  
20 including any previously “grandfathered” LCMs. The relevant California statutes  
21 can be found at Cal. Penal Code §§ 16740, 32310-32450. The particular provisions  
22 that are the subject of the current litigation are codified at Cal. Penal Code §§  
23 32310, 32390. California’s new LCM ban was set to take effect on July 1, 2017,  
24 although the State is temporarily enjoined from enforcing it pursuant to a ruling in  
25 the current case.

26 <sup>23</sup> For purposes of this report, incidence and fatality (i.e., mortality) rates are  
27 calculated in accordance with the methodological principles established by the  
28 Centers for Disease Control and Prevention. See Centers for Disease Control and  
Prevention, *An Introduction to Applied Epidemiology and Biostatistics* (2012).

<sup>24</sup> App. B, tbl. 2. There were no LCM bans in effect prior to 1990. Therefore, a  
priori, 1990 is the logical starting point for an analysis of the impact of LCM bans.

1 79 percent difference, with ban states experiencing a far lower rate of incidence.  
2 *See* App. B, tbl. 3.<sup>25</sup> Even if the examination is limited to the last 13 years (2005-  
3 2017), which covers the years when the nationwide AWB was no longer in effect,  
4 the difference in incidence rates is still 56 percent, with LCM-ban states again  
5 experiencing far fewer gun massacres per capita.<sup>26</sup>

6 It should be noted that the aforementioned incidence rates pertain to all gun  
7 massacres, regardless of the weaponry they involved. When calculations go a step  
8 further and are limited to gun massacres involving LCMs, the difference is even  
9 more pronounced. *See* App. B, tbl. 3. In terms of incidence rates, for the time-  
10 period since 1990, the benefit for jurisdictions that regulated LCMs was a 105  
11 percent difference, when compared to jurisdictions that did not regulate LCMs.<sup>27</sup>  
12 Again, even if the examination is limited to post-federal AWB era, the difference in  
13 incidence rates for LCM-involving gun massacres was 88 percent, again with  
14 LCM-ban states experiencing far fewer attacks involving LCMs.<sup>28</sup>

15 In terms of fatality rates, the patterns are similar. *See* App. B, tbl. 4. From  
16 1990-2017, the difference in rates was 101 percent, with jurisdictions that had LCM  
17 bans in effect experiencing drastically fewer deaths per capita than those areas  
18 which did not regulate LCMs. Even after the federal AWB expired, drastically  
19 cutting the number of areas restricting LCMs, states with LCM bans experienced  
20 fewer gun massacre deaths per capita, marked by a 74 percent difference in fatality

21  
22 <sup>25</sup> For purposes of coding, between September 13, 1994, and September 12, 2004,  
23 the federal AWB was in effect. During that ten-year period, all 50 states and the  
24 District of Columbia were under legal conditions that banned the possession of  
25 certain prohibited LCMs. As such, the entire country is coded as being under a  
26 LCM ban during the decade the AWB was in effect.

27 <sup>26</sup> App. B, tbl. 3.

28 <sup>27</sup> *Id.*

<sup>28</sup> *Id.*

1 rates. Limiting analysis to only those gun massacres that involved LCMs indicates  
2 that the difference in gun massacre fatality rates for LCM-ban jurisdictions was  
3 even greater when compared to the fatality rates for jurisdictions that opted not to  
4 regulate LCMs. In terms of LCM-involving gun massacres, the differences in  
5 fatality rates between the two categories of jurisdictions were 126 percent and 106  
6 percent for the time-periods 1990-2017 and 2005-2017, respectively, in both  
7 instances to the benefit of states that regulated LCMs.<sup>29</sup>

8 Basically, all of the above epidemiological calculations lead to the same  
9 conclusion: when LCM bans are in effect, per capita, fewer gun massacres occur  
10 and fewer people die in such high-fatality mass shootings.

11 The intent underlying most LCM bans is to restrict the circulation of LCMs.  
12 The reasoning is that, if there are fewer LCMs in circulation within their  
13 jurisdictions, then gunmen will be forced to use firearms with lower ammunition-  
14 capacities, resulting in attacks that do not kill enough victims to rise to the level of  
15 a gun massacre (six or more victims being shot to death in a mass shooting).<sup>30</sup>  
16 Moreover, even if gunmen opt to use semiautomatic firearms equipped with  
17 magazines, bans should still result in fewer opportunities to acquire and utilize  
18 LCMs prohibited by law to perpetrate gun massacres. The epidemiological data  
19 clearly lend support to both of these premises, in turn furthering the argument that  
20 bans on the possession of LCMs enhance public safety.

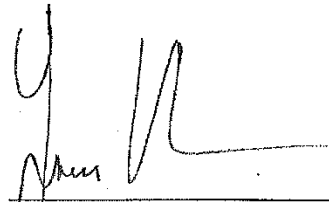
21  
22  
23 \_\_\_\_\_  
24 <sup>29</sup> App. B, tbl. 4.

25 <sup>30</sup> For instance, a gunman armed with a six-shot revolver can, in theory, kill six  
26 people without having to reload. However, to kill more people, that same gunman  
27 would require a way to fire additional ammunition, and the most efficient way to do  
28 so is to utilize a firearm armed with a LCM. Restricting the ability of gunmen to  
deliver large capacities of ammunition without interruption can result in fewer lives  
lost in shootings.

1 While imposing constraints on LCMs will not result in the prevention of all  
2 future mass shootings, the data suggest that denying rampage gunmen access to  
3 LCMs will result in a significant number of lives being saved.

4  
5 Respectfully Submitted,

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Louis Klarevas, Ph.D.  
January 5, 2018  
Queens, NY

**Appendix A**

**Curriculum Vitae of Dr. Louis Klarevas**

**Louis J. Klarevas**

**Education**

Ph.D. International Relations, 1999  
School of International Service  
American University

B.A. Political Science, *Cum Laude*, 1989  
School of Arts and Sciences  
University of Pennsylvania

**Current Position**

Associate Lecturer, Department of Global Affairs, University of Massachusetts -- Boston, 2015-

**Representation**

Trident Media Group  
41 Madison Avenue  
New York, NY 10010

**Professional Experience**

Expert Witness for State of California, *Duncan v. Becerra*, United States District Court for Southern District of California, Case Number 3:17-cv-1017-BEN, 2017

Expert Witness for State of California, *Wiese v. Becerra*, United States District Court for Eastern District of California, Case Number 2:17-cv-00903-WBS-KJN, 2017

Expert Witness for State of Colorado, *Rocky Mountain Gun Owners v. Hickenlooper*, District Court for County and City of Denver, Colorado, Case Number 2013CV33879, 2016-2017

Member, Guns on Campus Assessment Group, Johns Hopkins University Center for Gun Policy and Research, 2016

Consultant, National Joint Terrorism Task Force, Federal Bureau of Investigation, 2015

Senior Fulbright Scholar (Security Studies), Department of European and International Studies, University of Macedonia, Thessaloniki, Greece, 2012

Clinical Assistant Professor, Center for Global Affairs, New York University, 2006-2011

Founder and Coordinator, Graduate Transnational Security Program, Center for Global Affairs, New York University, 2009-2011

Faculty Affiliate, A. S. Onassis Program in Hellenic Studies, New York University, 2007-2011

Consultant, Academy for International Conflict Management and Peacebuilding, United States Institute of Peace, Washington, D.C., 2008-2009

Assistant Professor of Political Science, City University of New York – College of Staten Island, 2003-2006

Adjunct Professor, Center for Global Affairs, New York University, 2004-2006

Consultant, United States Institute of Peace, Washington, DC, 2005

Associate Fellow, European Institute, London School of Economics and Political Science, 2003-2004

Defense Analysis Research Fellow, London School of Economics and Political Science, 2002-2003

Visiting Assistant Professor of Political Science and International Affairs, George Washington University, Washington, D.C., 1999-2002

Adjunct Professor of Political Science, George Washington University, Washington, D.C., 1998-1999

Research Associate, United States Institute of Peace, Washington, D.C., 1992-1998

Adjunct Professor of International Relations, School of International Service, American University, Washington, D.C., 1994

Faculty Advisor, National Youth Leadership Forum, Washington, D.C., 1992

Dean's Scholar, School of International Service, American University, Washington, D.C., 1989-1992

### **Courses Taught**

American Government and Politics (undergraduate)

Counter-Terrorism and Homeland Security (graduate)

European-Atlantic Relations (undergraduate)

International Political Economy (graduate and undergraduate)

International Politics in a Post-Cold War Era (graduate)

International Relations (undergraduate)

International Security (graduate)

Machinery and Politics of American Foreign Policy (graduate)

Role of the United States in World Affairs (graduate)

Security Policy (graduate)

Theories of International Politics (graduate)

Transnational Security (graduate)

Transnational Terrorism (graduate, undergraduate, and senior seminar)

United States Foreign Policy (graduate and undergraduate)



## Books

*Rampage Nation: Securing America from Mass Shootings* (2016)

<http://www.penguinrandomhouse.com/books/252353/rampage-nation-by-louis-klarevas>

## Scholarship

*Firearms on College Campuses: Research Evidence and Policy Implications*, report prepared by the Johns Hopkins University Center for Gun Policy and Research for the Association of American Universities, October 2016 (co-authored with Daniel W. Webster, John J. Donohue, et al.)

"No Relief in Sight: Barring *Bivens* Suits in Torture Cases," *Presidential Studies Quarterly*, June 2013

"Trends in Terrorism Since 9/11," *Georgetown Journal of International Affairs*, Winter/Spring 2011

"The Death Penalty Should Be Decided Only Under a Specific Guideline," in Christine Watkins, ed., *The Ethics of Capital Punishment* (Cengage/Gale Publishers, 2011)

*Saving Lives in the 'Convoy of Joy': Lessons for Peace-Keeping from UNPROFOR*, United States Institute of Peace Case Study, 2009

"Casualties, Polls and the Iraq War," *International Security*, Fall 2006

"The CIA Leak Case Indicting Vice President Cheney's Chief of Staff," *Presidential Studies Quarterly*, June 2006

"Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup," *Diplomatic History*, June 2006

"Greeks Bearing Consensus: An Outline for Increasing Greece's Soft Power in the West," *Mediterranean Quarterly*, Summer 2005

"W Version 2.0: Foreign Policy in the Second Bush Term," *The Fletcher Forum of World Affairs*, Summer 2005

"Can You Sue the White House? Opening the Door for Separation of Powers Immunity in *Cheney v. District Court*," *Presidential Studies Quarterly*, December 2004

"Political Realism: A Culprit for the 9/11 Attacks," *Harvard International Review*, Fall 2004

*Greeks Bearing Consensus: An Outline for Increasing Greece's Soft Power in the West*, Hellenic Observatory Discussion Paper 18, London School of Economics, November 2004

*Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup*, Hellenic Observatory Discussion Paper 15, London School of Economics, February 2004

"Media Impact," in Mark Rozell, ed., *The Media and American Politics: An Introduction* (Lanham, MD: Rowman & Littlefield, 2003)

"The Surrender of Alleged War Criminals to International Tribunals: Examining the Constitutionality of Extradition via Congressional-Executive Agreement," *UCLA Journal of International Law and Foreign Affairs*, Fall/Winter 2003

"The Constitutionality of Congressional-Executive Agreements: Insights from Two Recent Cases," *Presidential Studies Quarterly*, June 2003

"The 'Essential Domino' of Military Operations: American Public Opinion and the Use of Force," *International Studies Perspectives*, November 2002

"The Polls-Trends: The United States Peace Operation in Somalia," *Public Opinion Quarterly*, Winter 2001

*American Public Opinion on Peace Operations: The Cases of Somalia, Rwanda, and Haiti*, University of Michigan Dissertation Services, 1999

"Turkey's Right v. Might Dilemma in Cyprus: Reviewing the Implications of *Loizidou v. Turkey*," *Mediterranean Quarterly*, Spring 1999

"An Outline of a Plan Toward a Comprehensive Settlement of the Greek-Turkish Dispute," in Vangelis Calotychos, ed., *Cyprus and Its People: Nation, Identity, and Experience in an Unimaginable Community, 1955-1997*, Boulder, CO: Westview Press, 1998 (co-authored with Theodore A. Couloumbis)

"Prospects for Greek-Turkish Reconciliation in a Changing International Setting," in Robert L. Pfaltzgraff and Dimitris Keridis, eds., *Security in Southeastern Europe and the U.S.-Greek-Relationship*, London: Brassey's, 1997 (co-authored with Theodore A. Couloumbis)

"Prospects for Greek-Turkish Reconciliation in a Changing International Setting," in Tozun Bahcheli, Theodore A. Couloumbis, and Patricia Carley, eds., *Greek-Turkish Relations and U.S. Foreign Policy: Cyprus, the Aegean, and Regional Stability*, Washington, D.C.: U.S. Institute of Peace, 1997 (co-authored with Theodore A. Couloumbis)

"Structuration Theory in International Relations," *Swords & Ploughshares*, Spring 1992

#### **Book Reviews**

Review of James Edward Miller's *The United States and the Making of Modern Greece: History and Power, 1950-1974*, *Presidential Studies Quarterly*, June 2012

"The Life-Cycle of Regimes: Oran Young's *International Cooperation*," *Millennium*, Winter 1990 (co-authored with Nanette S. Levinson)

### **Commentaries and Correspondence**

"The Texas Shooting Again Reveals Inadequate Mental-Health Help in the U.S. Military," *New York Daily News*, November 7, 2017

"Why Mass Shootings Are Getting Worse," *New York Daily News*, October 2, 2017

"London and the Mainstreaming of Vehicular Terrorism," *The Atlantic*, June 4, 2017 (co-authored with Colin P. Clarke)

"Almost Every Fatal Terrorist Attack in America since 9/11 Has Involved Guns," *Vice*, December 4, 2015

"Firearms Have Killed 82 of the 86 Victims of Post-9/11 Domestic Terrorism," *The Trace*, June 30, 2015

"International Law and the 2012 Presidential Elections," Vitoria Institute Website, March 24, 2012

"Al Qaeda Without Bin Laden," CBS News *Opinion*, May 2, 2011

"Fuel, But Not the Spark," *Zocalo Public Square*, February 16, 2011

"After Tucson, Emotions Run High," *New York Times*, January 12, 2011 (correspondence)

"WikiLeaks, the Web, and the Need to Rethink the Espionage Act," *The Atlantic*, November 9, 2010

"N.Y. Can Lead the Nation in Fighting Child Sex Trafficking," *New York Daily News*, April 21, 2009 (co-authored with Ana Burdsall-Morse)

"Deprogramming Jihadis," *New York Times Magazine*, November 23, 2008 (correspondence)

"Food: An Issue of National Security," *Forbes* (Forbes.com), October 25, 2008

"Crack Down on Handguns – They're a Tool of Terror, Too," *New York Daily News*, October 25, 2007

"An Invaluable Opportunity for Greece To Increase Its Standing and Influence on the World Stage," *Kathimerini* (Greece), January 13, 2005

"Not a Divorce," *Survival*, Winter 2003-2004

"How Many War Deaths Can We Take?" *Newsday*, November 7, 2003

"Death Be Not Proud," *The New Republic*, October 27, 2003 (correspondence)

"Down But Not Out," London School of Economics Iraq War Website, April 2003

"Four Half-Truths and a War," *American Reporter*, April 6, 2003

"The Greek Bridge between Old and New Europe," *National Herald*, February 15-16, 2003

"Debunking a Widely-Believed Greek Conspiracy Theory," *National Herald*, September 21-22, 2002

"Debunking of Elaborate Media Conspiracies an Important Trend," *Kathimerini* (Greece), September 21, 2002 [Not Related to September 21-22, 2002, *National Herald* Piece with Similar Title]

"Cold Turkey," *Washington Times*, March 16, 1998

"Make Greece and Turkey Behave," *International Herald Tribune*, January 3, 1998

"If This Alliance Is to Survive . . .," *Washington Post*, January 2, 1998

"Defuse Standoff on Cyprus," *Defense News*, January 27-February 2, 1997

"Ukraine Holds Nuclear Edge," *Defense News*, August 2-8, 1993

**Commentaries for *Foreign Policy* – <http://www.foreignpolicy.com>**

"The White House's Benghazi Problem," September 20, 2012

"Greeks Don't Want a Grexit," June 14, 2012

"The Earthquake in Greece," May 7, 2012

"The Idiot Jihadist Next Door," December 1, 2011

"Locked Up Abroad," October 4, 2011

**Commentaries for *The New Republic* – <http://www.tnr.com/users/louis-klarevas>**

"What the U.N. Can Do To Stop Getting Attacked by Terrorists," September 2, 2011

"Is It Completely Nuts That the British Police Don't Carry Guns? Maybe Not," August 13, 2011

"How Obama Could Have Stayed the Execution of Humberto Leal Garcia," July 13, 2011

"After Osama bin Laden: Will His Death Hasten Al Qaeda's Demise?" May 2, 2011

"Libya's Stranger Soldiers: How To Go After Qaddafi's Mercenaries," February 28, 2011

"Closing the Gap: How To Reform U.S. Gun Laws To Prevent Another Tucson," January 13, 2011

"Easy Target," June 13, 2010

**Commentaries Written for *The Huffington Post* – <http://www.huffingtonpost.com/louis-klarevas>**

“Improving the Justice System Following the Deaths of Michael Brown and Eric Garner,” December 4, 2014

“American Greengemony: How the U.S. Can Help Ukraine and the E.U. Break Free from Russia’s Energy Stranglehold,” March 6, 2014

“Guns Don’t Kill People, Dogs Kill People,” October 17, 2013

“Romney the Liberal Internationalist?” October 23, 2012

“Romney’s Unrealistic Foreign Policy Vision: National Security Funded by Money Growing Trees,” October 10, 2012

“Do the Wrong Thing: Why Penn State Failed as an Institution,” November 14, 2011

“Holding Egypt’s Military to Its Pledge of Democratic Reform,” February 11, 2011

“The Coming Twivolutions? Social Media in the Recent Uprisings in Tunisia and Egypt,” January 31, 2011

“Scholarship Slavery: Does St. John’s ‘Dean of Mean’ Represent a New Face of Human Trafficking?” October 6, 2010

“Misunderstanding Terrorism, Misrepresenting Islam,” September 21, 2010

“Bombing on the Analysis of the Times Square Bomb Plot,” May 5, 2010

“Do the Hutaree Militia Members Pose a Terrorist Threat?” May 4, 2010

“Addressing Mexico’s Gun Violence One Extradition at a Time,” March 29, 2010

“Terrorism in Texas: Why the Austin Plane Crash Is an Act of Terror,” February 19, 2010

“Securing American Primacy by Tackling Climate Change: Toward a National Strategy of Greengemony,” December 15, 2009

“Traffickers Without Borders: A ‘Journey’ into the Life of a Child Victimized by Sex Trafficking,” November 17, 2009

“Beyond a Lingering Doubt: It’s Time for a New Standard on Capital Punishment,” November 9, 2009

“It’s the Guns Stupid: Why Handguns Remain One of the Biggest Threats to Homeland Security,” November 7, 2009

“Obama Wins the 2009 Nobel Promise Prize,” October 9, 2009

**Legal Analyses Written for *Writ* – <http://writ.news.findlaw.com/contributors.html#klarevas>**

“Human Trafficking and the Child Protection Compact Act of 2009,” *Writ* (FindLaw.com), July 15, 2009 (co-authored with Christine Buckley)

“Can the Justice Department Prosecute Reporters Who Publish Leaked Classified Information? Interpreting the Espionage Act,” *Writ* (FindLaw.com), June 9, 2006

“Will the Precedent Set by the Indictment in a Pentagon Leak Case Spell Trouble for Those Who Leaked Valerie Plame's Identity to the Press?” *Writ* (FindLaw.com), August 15, 2005

“Jailing Judith Miller: Why the Media Shouldn’t Be So Quick to Defend Her, and Why a Number of These Defenses Are Troubling,” *Writ* (FindLaw.com), July 8, 2005

“The Supreme Court Dismisses the Controversial Consular Rights Case: A Blessing in Disguise for International Law Advocates?” *Writ* (FindLaw.com), June 6, 2005 (co-authored with Howard S. Schiffman)

“The Decision Dismissing the Lawsuit against Vice President Dick Cheney,” *Writ* (FindLaw.com), May 17, 2005

“The Supreme Court Considers the Rights of Foreign Citizens Arrested in the United States,” *Writ* (FindLaw.com), March 21, 2005 (co-authored with Howard S. Schiffman)

**Columns Written (in Greek) for *To Vima* Newspaper (Athens)**

“Time to Pay,” August 2003

“Does Turkey Have an Ulterior Motive?” July 2003

“Will They Make Up?” June 2003

“Don’t Take the Bait,” May 2003

“If the Cheers Turn to Jeers,” April 2003

“The Power of a Niche Identity,” April 2003

“If You Can’t Beat Them, Join Them,” April 2003

“Show Me the Euros,” March 2003

### **Presentations and Addresses**

**In addition to the presentations listed below, I have made close to one hundred media appearances, book events, and educational presentations (beyond lectures for my own classes)**

“Protecting the Homeland: Tracking Patterns and Trends in Domestic Terrorism,” address delivered to the annual meeting of the National Joint Terrorism Task Force, June 2015

“Sovereign Accountability: Creating a Better World by Going after Bad Political Leaders,” address delivered to the Daniel H. Inouye Asia-Pacific Center for Security Studies, November 2013

“Game Theory and Political Theater,” address delivered at the School of Drama, State Theater of Northern Greece, May 2012

“Holding Heads of State Accountable for Gross Human Rights Abuses and Acts of Aggression,” presentation delivered at the Michael and Kitty Dukakis Center for Public and Humanitarian Service, American College of Thessaloniki, May 2012

Chairperson, Cultural Enrichment Seminar, Fulbright Foundation – Southern Europe, April 2012

Participant, Roundtable on “Did the Intertubes Topple Hosni?” Zócalo Public Square, February 2011

Chairperson, Panel on Democracy and Terrorism, annual meeting of the International Security Studies Section of the International Studies Association, October 2010

“Trends in Terrorism Within the American Homeland Since 9/11,” paper to be presented at the annual meeting of the International Security Studies Section of the International Studies Association, October 2010

Panelist, “In and Of the World,” Panel on Global Affairs in the 21<sup>st</sup> Century, Center for Global Affairs, New York University, March 2010

Moderator, “Primacy, Perils, and Players: What Does the Future Hold for American Security?” Panel of Faculty Symposium on Global Challenges Facing the Obama Administration, Center for Global Affairs, New York University, March 2009

“Europe’s Broken Border: The Problem of Illegal Immigration, Smuggling and Trafficking via Greece and the Implications for Western Security,” presentation delivered at the Center for Global Affairs, New York University, February 2009

“The Dangers of Democratization: Implications for Southeast Europe,” address delivered at the University of Athens, Athens, Greece, May 2008

Participant, “U.S. National Intelligence: The Iran National Intelligence Estimate,” Council on Foreign Relations, New York, April 2008

Moderator, First Friday Lunch Series, “Intelligence in the Post-9/11 World: An Off-the-Record Conversation with Dr. Joseph Helman (U.S. Senior National Intelligence Service),” Center for Global Affairs, New York University, March 2008



Participant, "U.S. National Intelligence: Progress and Challenges," Council on Foreign Relations, New York, March 2008

Moderator, First Friday Lunch Series, "Public Diplomacy: The Steel Backbone of America's Soft Power: An Off-the-Record Conversation with Dr. Judith Baroody (U.S. Department of State)," Center for Global Affairs, New York University, October 2007

"The Problems and Challenges of Democratization: Implications for Latin America," presentation delivered at the Argentinean Center for the Study of Strategic and International Relations Third Conference on the International Relations of South America (IBERAM III), Buenos Aires, Argentina, September 2007

"The Importance of Higher Education to the Hellenic-American Community," keynote address to the annual Pan-Icarian Youth Convention, New York, May 2007

Moderator, First Friday Lunch Series, Panel Spotlighting Graduate Theses and Capstone Projects, Center for Global Affairs, New York University, April 2007

Convener, U.S. Department of State Foreign Officials Delegation Working Group on the Kurds and Turkey, March 2007

"Soft Power and International Law in a Globalizing Latin America," round-table presentation delivered at the Argentinean Center for the Study of Strategic and International Relations Twelfth Conference of Students and Graduates of International Relations in the Southern Cone (CONOSUR XII), Buenos Aires, Argentina, November 2006

Moderator, First Friday Lunch Series, "From Berkeley to Baghdad to the Beltway: An Off-the-Record Conversation with Dr. Catherine Dale (U.S. Department of Defense)," Center for Global Affairs, New York University, November 2006

Chairperson, Roundtable on Presidential Privilege and Power Reconsidered in a Post-9/11 Era, American Political Science Association Annual Meeting, September 2006

"Constitutional Controversies," round-table presentation delivered at City University of New York-College of Staten Island, September 2005

"The Future of the Cyprus Conflict," address to be delivered at City University of New York College of Staten Island, April 2005

"The 2004 Election and the Future of American Foreign Policy," address delivered at City University of New York College of Staten Island, December 2004

"One Culprit for the 9/11 Attacks: Political Realism," address delivered at City University of New York-College of Staten Island, September 2004

"Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup," address delivered at London School of Economics, November 2003

"Beware of Europeans Bearing Gifts? Cypriot Accession to the EU and the Prospects for Peace," address delivered at Conference on Mediterranean Stability, Security, and Cooperation, Austrian Defense Ministry, Vienna, Austria, October 2003

Co-Chair, Panel on Ideational and Strategic Aspects of Greek International Relations, London School of Economics Symposium on Modern Greece, London, June 2003

"Greece between Old and New Europe," address delivered at London School of Economics, June 2003

Co-Chair, Panel on International Regimes and Genocide, International Association of Genocide Scholars Annual Meeting, Galway, Ireland, June 2003

"American Cooperation with International Tribunals," paper presented at the International Association of Genocide Scholars Annual Meeting, Galway, Ireland, June 2003

"Is the Unipolar Moment Fading?" address delivered at London School of Economics, May 2003

"Cyprus, Turkey, and the European Union," address delivered at London School of Economics, February 2003

"Bridging the Greek-Turkish Divide," address delivered at Northwestern University, May 1998

"The CNN Effect: Fact or Fiction?" address delivered at Catholic University, April 1998

"The Current Political Situation in Cyprus," address delivered at AMIDEAST, July 1997

"Making the Peace Happen in Cyprus," presentation delivered at the U.S. Institute of Peace in July 1997

"The CNN Effect: The Impact of the Media during Diplomatic Crises and Complex Emergencies," a series of presentations delivered in Cyprus (including at Ledra Palace), May 1997

"Are Policy-Makers Misreading the Public? American Public Opinion on the United Nations," paper presented at the International Studies Association Annual Meeting, Toronto, Canada, March 1997 (with Shoon Murray)

"The Political and Diplomatic Consequences of Greece's Recent National Elections," presentation delivered at the National Foreign Affairs Training Center, Arlington, VA, September 1996

"Prospects for Greek-Turkish Reconciliation," presentation delivered at the U.S. Institute of Peace Conference on Greek-Turkish Relations, Washington, D.C., June, 1996 (with Theodore A. Couloumbis)

"Greek-Turkish Reconciliation," paper presented at the Karamanlis Foundation and Fletcher School of Diplomacy Joint Conference on The Greek-U.S. Relationship and the Future of Southeastern Europe, Washington, D.C., May, 1996 (with Theodore A. Couloumbis)

"The Path toward Peace in the Eastern Mediterranean and the Balkans in the Post-Cold War Era," paper presented at the International Studies Association Annual Meeting, San Diego, CA, March, 1996 (with Theodore A. Couloubis)

"Peace Operations: The View from the Public," paper presented at the International Studies Association Annual Meeting, San Diego, CA, March, 1996

Chairperson, Roundtable on Peace Operations, International Security Section of the International Studies Association Annual Meeting, Rosslyn, VA, October, 1995

"Chaos and Complexity in International Politics: Epistemological Implications," paper presented at the International Studies Association Annual Meeting, Washington, D.C., March, 1994

"At What Cost? American Mass Public Opinion and the Use of Force Abroad," paper presented at the International Studies Association Annual Meeting, Washington, D.C., March, 1994 (with Daniel B. O'Connor)

"American Mass Public Opinion and the Use of Force Abroad," presentation delivered at the United States Institute of Peace, Washington, D.C., February, 1994 (with Daniel B. O'Connor)

"For a Good Cause: American Mass Public Opinion and the Use of Force Abroad," paper presented at the Annual Meeting of the Foreign Policy Analysis/Midwest Section of the International Studies Association, Chicago, IL, October, 1993 (with Daniel B. O'Connor)

"American International Narcotics Control Policy: A Critical Evaluation," presentation delivered at the American University Drug Policy Forum, Washington, D.C., November, 1991

"American National Security in the Post-Cold War Era: Social Defense, the War on Drugs, and the Department of Justice," paper presented at the Association of Professional Schools of International Affairs Conference, Denver, CO, February, 1991

#### **Referee for Grant Organizations, Peer-Reviewed Journals, and Book Publishers**

National Science Foundation, Division of Social and Economic Sciences

*American Political Science Review*

*Comparative Political Studies*

*Journal of Public and International Affairs*

*Millennium*

*Political Behavior*

*Presidential Studies Quarterly*

Brill Publishers

**Service to University, Profession, and Community**

Expert Witness for State of California, 2017

Expert Witness for State of Colorado, 2016-2017

Member, Guns on Campus Assessment Group, Johns Hopkins University and Association of American Universities, 2016

Member, Fulbright Selection Committee, Fulbright Foundation, Athens, Greece, 2012

Founder and Coordinator, Graduate Transnational Security Studies, Center for Global Affairs, New York University, 2009-2011

Faculty Advisor, Global Affairs Graduate Society, New York University, 2009-2011

Organizer, Annual Faculty Symposium, Center for Global Affairs, New York University, 2009

Member, Faculty Search Committees, Center for Global Affairs, New York University, 2007-2009

Member, Graduate Program Director Search Committee, Center for Global Affairs, New York University, 2008-2009

Developer, Transnational Security Studies, Center for Global Affairs, New York University, 2007-2009

Participant, Council on Foreign Relations Special Series on National Intelligence, New York, 2008

Member, Graduate Certificate Curriculum Committee, Center for Global Affairs, New York University, 2008

Member, Faculty Affairs Committee, New York University, 2006-2008

Member, Curriculum Review Committee, Center for Global Affairs, New York University, 2006-2008

Member, Overseas Study Committee, Center for Global Affairs, New York University, 2006-2007

Participant, New York Academic Delegation to Israel, Sponsored by American-Israel Friendship League, 2006

Member, Science, Letters, and Society Curriculum Committee, City University of New York-College of Staten Island, 2006

Member, Graduate Studies Committee, City University of New York-College of Staten Island, 2005-2006

Member, Summer Research Grant Selection Committee, City University of New York-College of Staten Island, 2005

Director, College of Staten Island Association, 2004-2005

Member of Investment Committee, College of Staten Island Association, 2004-2005

Member of Insurance Committee, College of Staten Island Association, 2004-2005

Member, International Studies Advisory Committee, City University of New York-College of Staten Island, 2004-2006

Faculty Advisor, Pi Sigma Alpha National Political Science Honor Society, City University of New York-College of Staten Island, 2004-2006

Participant, World on Wednesday Seminar Series, City University of New York-College of Staten Island, 2004-2005

Participant, American Democracy Project, City University of New York-College of Staten Island, 2004

Participant, Philosophy Forum, City University of New York-College of Staten Island, 2004

Department Liaison, Commencement, City University of New York-College of Staten Island, 2004

Member of Scholarship Committee, Foundation of Pan-Icarian Brotherhood, 2003-2005, 2009

Scholarship Chairman, Foundation of Pan-Icarian Brotherhood, 2001-2003

Faculty Advisor to the Kosmos Hellenic Society of the George Washington University, 2001-2002

Member of University of Pennsylvania's Alumni Application Screening Committee, 2000-2002

Participant in U.S. Department of State's International Speakers Program, 1997

Participant in Yale University's United Nations Project, 1996-1997

Member of Editorial Advisory Board, *Journal of Public and International Affairs*, Woodrow Wilson School of Public and International Affairs, Princeton University, 1991-1993

Voting Graduate Student Member, School of International Service Rank and Tenure Committee, American University, 1990-1992

Member of School of International Service Graduate Student Council, American University, 1990-1992

Teaching Assistant for the Several Courses (World Politics, Beyond Sovereignty, Between Peace and War, Soviet-American Security Relations, and Organizational Theory) at School of International Service Graduate Student Council, American University, 1989-1992

Representative for American University at the Annual Meeting of the Association of Professional Schools of International Affairs, Denver, Colorado, 1991

**Associations and Organizations (Past and Present)**

Academy of Political Science

American Political Science Association

Anderson Society of American University

Carnegie Council Global Ethics Network

International Political Science Association

International Studies Association

Museum of Modern Art

New York Screenwriters Collective

Pan-Icarian Brotherhood

Pi Sigma Alpha

Sigma Nu Fraternity

Social Science Research Network

United States Department of State Alumni Network

United States Institute of Peace Alumni Association

University of Pennsylvania Alumni Association

**Honors and Awards**

Senior Fulbright Fellowship, 2012

Professional Staff Congress Research Grantee, City University of New York, 2004-2005

Research Assistance Award (Two Times), City University of New York-College of Staten Island, 2004

Summer Research Fellowship, City University of New York-College of Staten Island, 2004

European Institute Associate Fellowship, London School of Economics, 2003-2004

Hellenic Observatory Defense Analysis Research Fellowship, London School of Economics, 2003

United States Institute of Peace Certificate of Meritorious Service, 1996

National Science Foundation Dissertation Research Grant, 1995 (declined)

Alexander George Award for Best Graduate Student Paper, Runner-Up, Foreign Policy Analysis Section, International Studies Association, 1994

Dean's Scholar Fellowship, School of International Service, American University, 1989-1992

Graduate Research and Teaching Assistantship, School of International Service, American University, 1989-1992

American Hellenic Educational Progressive Association (AHEPA) College Scholarship, 1986

Political Science Student of the Year, Wilkes-Barre Area School District, 1986



**Appendix B**

**Tables and Figures in Support of Expert Report Submitted by Dr. Louis Klarevas**

**Appendix B – Table 1****The 10 Deadliest Intentional Acts of Violence of the Past Decade, 2008-2017**

	<b>Deaths</b>	<b>Incident Type</b>	<b>Date</b>	<b>Perpetrator</b>	<b>City</b>	<b>State</b>
1	58	Mass Shooting	10/1/2017	Stephen Paddock	Las Vegas	NV
2	49	Mass Shooting	6/12/2016	Omar Mateen	Orlando	FL
3	27	Mass Shooting	12/14/2012	Adam Lanza	Newtown	CT
4	26	Mass Shooting	11/5/2017	Devin Kelley	Sutherland Springs	TX
5	14	Mass Shooting	12/2/2015	Syed Rizwan Farook and Tashfeen Malik	San Bernardino	CA
6	13	Mass Shooting	4/3/2009	Jiverly Wong	Binghamton	NY
7	13	Mass Shooting	11/5/2009	Nidal Hasan	Fort Hood	TX
8	12	Mass Shooting	7/20/2012	James Holmes	Aurora	CO
9	12	Mass Shooting	9/16/2013	Aaron Alexis	Washington	DC
10	10	Mass Shooting	3/10/2009	Michael McLendon	Kinston, Samson, and Geneva	AL

## Appendix B – Table 2

## Gun Massacres in the United States, 1968-2017

	Date	City	State	Perpetrator(s)	LCM	Deaths
1	3/16/1968	Ironwood	MI	Eric Pearson	N	7
2	6/25/1968	Good Hart	MI	Undetermined	N	6
3	12/19/1968	Napa	CA	Charles Bray	N	6
4	9/3/1971	Phoenix	AZ	John Freeman	N	7
5	6/21/1972	Cherry Hill	NJ	Edwin Grace	Y	6
6	1/7/1973	New Orleans	LA	Mark Essex	N	7
7	6/21/1973	Palos Hills	IL	William Workman	N	7
8	4/22/1973	Los Angeles	CA	William Bonner	N	7
9	6/9/1973	Boston	MA	George O'Leary	N	6
10	11/4/1973	Cleveland	OH	Cyril Rovansk	N	7
11	2/18/1974	Fayette	MS	Frankie Lias	N	7
12	11/13/1974	Amityville	NY	Ronald DeFeo	N	6
13	3/30/1975	Hamilton	OH	James Ruppert	N	11
14	10/19/1975	Sutherland	NE	Erwin Simants	N	6
15	3/12/1976	Trevese	PA	George Geschwendt	N	6
16	7/12/1976	Fullerton	CA	Edward Allaway	Y	7
17	7/23/1977	Klamath Falls	OR	DeWitt Henry	Y	6
18	8/26/1977	Hackettstown	NJ	Emile Benoist	N	6
19	7/16/1978	Oklahoma City	OK	Harold Stafford, Roger Stafford, and Verna Stafford	N	6
20	1/3/1981	Delmar	IA	Gene Gilbert	N	6
21	1/7/1981	Richmond	VA	Artie Ray Cherry, Michael Finazzo, and Tyler Fmdak	N	6
22	5/2/1981	Clinton	MD	Ronald Ellis	N	6
23	8/21/1981	Indianapolis	IN	King Bell	N	6
24	2/17/1982	Farwell	MI	Robert Haggart	N	7
25	8/9/1982	Grand Prairie	TX	John Parish	N	6
26	8/20/1982	Miami	FL	Carl Brown	N	8
27	9/7/1982	Craig	AK	Undetermined	N	8
28	9/25/1982	Wilkes-Barre	PA	George Banks	Y	13
29	2/18/1983	Seattle	WA	Kwan Fai Mak and Benjamin Ng	N	13
30	3/3/1983	McCarthy	AK	Louis Hastings	N	6
31	10/11/1983	College Station and Hempstead	TX	Eliseo Moreno	N	6
32	4/15/1984	Brooklyn	NY	Christopher Thomas	N	10
33	5/19/1984	Manley Hot Springs	AK	Michael Silka	N	8
34	6/29/1984	Dallas	TX	Abdelkrim Belachheb	Y	6
35	7/18/1984	San Ysidro	CA	James Huberty	Y	21
36	10/18/1984	Evansville	IN	James Day	N	6
37	8/20/1986	Edmond	OK	Patrick Sherrill	N	14
38	12/8/1986	Oakland	CA	Rita Lewis and David Welch	Y	6
39	2/5/1987	Flint	MI	Terry Morris	N	6
40	4/23/1987	Palm Bay	FL	William Cruse	Y	6
41	7/12/1987	Tacoma	WA	Daniel Lynam	N	7
42	9/25/1987	Elkland	MO	James Schnick	N	7
43	12/30/1987	Algona	IA	Robert Dreesman	N	6
44	2/16/1988	Sunnyvale	CA	Richard Farley	N	7
45	9/14/1989	Louisville	KY	Joseph Wesbecker	Y	8
46	6/18/1990	Jacksonville	FL	James Pough	Y	9
47	1/26/1991	Chimayo	NM	Ricky Abeyta	N	7
48	8/9/1991	Waddell	AZ	Jonathan Doody and Alessandro Garcia	N	9
49	10/16/1991	Killeen	TX	George Hennard	Y	23
50	11/7/1992	Morro Bay and Paso Robles	CA	Lynwood Drake	N	6
51	1/8/1993	Palatine	IL	James Degorski and Juan Luna	N	7
52	5/16/1993	Fresno	CA	Allen Heflin and Johnnie Malarkey	Y	7
53	7/1/1993	San Francisco	CA	Gian Luigi Ferri	Y	8
54	12/7/1993	Garden City	NY	Colin Ferguson	Y	6
55	4/20/1999	Littleton	CO	Eric Harris and Dylan Klebold	Y	13
56	7/12/1999	Atlanta	GA	Cyrano Marks	U	6
57	7/29/1999	Atlanta	GA	Mark Barton	Y	9
58	9/15/1999	Fort Worth	TX	Larry Ashbrook	Y	7
59	11/2/1999	Honolulu	HI	Byran Koji Uyesugi	Y	7
60	12/26/2000	Wakefield	MA	Michael McDermott	Y	7

## Appendix B – Table 2 (Cont.)

## Gun Massacres in the United States, 1968-2017

	Date	City	State	Perpetrator(s)	LCM	Deaths
61	12/28/2000	Philadelphia	PA	Shihean Black, Dawud Faruqi, Khalid Faruqi, and Bruce Veney	Y	7
62	8/26/2002	Rutledge	AL	Westley Harris	N	6
63	1/15/2003	Edinburg	TX	Humberto Garza, Robert Garza, Rodolfo Medrano, and Juan Ramirez	U	6
64	7/8/2003	Meridian	MS	Douglas Williams	N	6
65	8/27/2003	Chicago	IL	Salvador Tapia	N	6
66	3/12/2004	Fresno	CA	Marcus Wesson and Sebhrenah Wesson	N	9
67	11/21/2004	Birchwood	WI	Chai Soua Vang	Y	6
68	3/12/2005	Brookfield	WI	Terry Ratzmann	Y	7
69	3/21/2005	Red Lake	MN	Jeffrey Weise	Y	9
70	1/30/2006	Goleta	CA	Jennifer San Marco	Y	7
71	3/25/2006	Seattle	WA	Kyle Huff	Y	6
72	6/1/2006	Indianapolis	IN	James Stewart and Desmond Turner	Y	7
73	12/16/2006	Kansas City	KS	Hersel Isadore	N	6
74	4/16/2007	Blacksburg	VA	Seung Hui Cho	Y	32
75	10/7/2007	Crandon	WI	Tyler Peterson	Y	6
76	12/5/2007	Omaha	NE	Robert Hawkins	Y	8
77	12/24/2007	Carnation	WA	Michele Anderson and Joseph McEnroe	U	6
78	2/7/2008	Kirkwood	MO	Charles Lee Thornton	Y	6
79	9/2/2008	Alger	WA	Isaac Zamora	U	6
80	12/24/2008	Covina	CA	Bruce Pardo	Y	8
81	1/27/2009	Los Angeles	CA	Ervin Lupoe	N	6
82	3/10/2009	Kinston, Samson, and Geneva	AL	Michael McLendon	Y	10
83	3/29/2009	Carthage	NC	Robert Stewart	N	8
84	4/3/2009	Binghamton	NY	Jiverly Wong	Y	13
85	11/5/2009	Fort Hood	TX	Nidal Hasan	Y	13
86	1/19/2010	Appomattox	VA	Christopher Speight	Y	8
87	8/3/2010	Manchester	CT	Omar Thornton	Y	8
88	1/8/2011	Tucson	AZ	Jared Loughner	Y	6
89	7/7/2011	Grand Rapids	MI	Rodrick Dantzler	Y	7
90	8/7/2011	Copley Township	OH	Michael Hance	N	7
91	10/12/2011	Seal Beach	CA	Scott Dekraai	N	8
92	12/25/2011	Grapevine	TX	Aziz Yazdanpanah	N	6
93	4/2/2012	Oakland	CA	One Goh	N	7
94	7/20/2012	Aurora	CO	James Holmes	Y	12
95	8/5/2012	Oak Creek	WI	Wade Page	Y	6
96	9/27/2012	Minneapolis	MN	Andrew Engeldinger	Y	6
97	12/14/2012	Newtown	CT	Adam Lanza	Y	27
98	7/26/2013	Hialeah	FL	Pedro Vargas	Y	6
99	9/16/2013	Washington	DC	Aaron Alexis	N	12
100	7/9/2014	Spring	TX	Ronald Lee Haskell	Y	6
101	9/18/2014	Bell	FL	Don Spirit	U	7
102	2/26/2015	Tyrone	MO	Joseph Jesse Aldridge	U	7
103	5/17/2015	Waco	TX	Unidentified	Y	9
104	6/17/2015	Charleston	SC	Dylann Storm Roof	Y	9
105	8/8/2015	Houston	TX	David Conley	U	8
106	10/1/2015	Roseburg	OR	Christopher Harper-Mercer	Y	9
107	12/2/2015	San Bernardino	CA	Syed Rizwan Farook and Tashfeen Malik	Y	14
108	2/21/2016	Kalamazoo	MI	Jason Dalton	Y	6
109	4/22/2016	Piketon	OH	Undetermined	U	8
110	6/12/2016	Orlando	FL	Omar Mateen	Y	49
111	5/27/2017	Brookhaven	MS	Corey Godbolt	U	8
112	9/10/2017	Plano	TX	Spencer Hight	Y	8
113	10/1/2017	Las Vegas	NV	Stephen Paddock	Y	58
114	11/5/2017	Sutherland Springs	TX	Devin Kelley	Y	26

**Note:** The incidents highlighted in gray represent the 20 gun massacres that occurred at a time when and place where a ban on certain LCMs was in effect. Incidents marked as LCM-positive involved fatalities resulting from a firearm armed with least one magazine capable of holding more than 10 bullets.  
Y=Yes / N=No / U=Undetermined.

**Appendix B – Table 3****Gun Massacre Incidence Rates by Whether or Not LCM Bans Were in Effect**

<b>1990-2017 (All Incidents N=69)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.327	.142	79%
Number of Incidents	49	20	
<b>2005-2017 (All Incidents N=47)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.171	.096	56%
Number of Incidents	39	8	
<b>1990-2017 (Incidents Only Involving LCMs N=44)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.227	.071	105%
Number of Incidents	34	10	
<b>2005-2017 (Incidents Only Involving LCMs N=32)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.123	.048	88%
Number of Incidents	28	4	

**Note:** Incidence rates are calculated per one million people. All population data used to calculate incidence rates in this table are drawn from United States Census Bureau, "Population and Housing Unit Estimates Tables," <https://www.census.gov/programs-surveys/popest/data/tables.html> (last accessed January 4, 2018). The percentage difference refers to percentage difference between the two incidence rates—the rate for the jurisdictions where an LCM ban was in effect and the rate for the jurisdictions where an LCM ban was not in effect. All percentage differences were calculated using the Calculator Soup online percentage difference calculator. As the Calculator Soup website states, "Percentage difference equals the absolute value of the change in value, divided by the average of the 2 numbers, all multiplied by 100." The calculator and formula are available at the following website: <https://www.calculatorsoup.com/calculators/algebra/percent-difference-calculator.php> (last accessed January 4, 2018).

**Appendix B – Table 4****Gun Massacre Fatality Rates by Whether or Not LCM Bans Were in Effect**

<b>1990-2017 (Fatalities in All Incidents N=699)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	3.58	1.17	101%
Number of Fatalities	535	164	
<b>2005-2017 (Fatalities in All Incidents N=522)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	1.96	0.90	74%
Number of Fatalities	447	75	
<b>1990-2017 (Fatalities in Incidents Only Involving LCMs N=521)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	2.87	0.65	126%
Number of Fatalities	429	92	
<b>2005-2017 (Fatalities in Incidents Only Involving LCMs N=412)</b>			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	1.62	0.50	106%
Number of Fatalities	370	42	

**Note:** Fatality rates are calculated per one million people. All population data used to calculate fatality rates in this table are drawn from United States Census Bureau, "Population and Housing Unit Estimates Tables," <https://www.census.gov/programs-surveys/popest/data/tables.html> (last accessed January 4, 2018). The percentage difference refers to percentage difference between the two fatality rates—the rate for the jurisdictions where an LCM ban was in effect and the rate for the jurisdictions where an LCM ban was not in effect. All percentage differences were calculated using the Calculator Soup online percentage difference calculator. As the Calculator Soup website states, "Percentage difference equals the absolute value of the change in value, divided by the average of the 2 numbers, all multiplied by 100." The calculator and formula are available at the following website: <https://www.calculatorsoup.com/calculators/algebra/percent-difference-calculator.php> (last accessed January 4, 2018).

**Appendix B – Figure 1**  
**Gun Massacre Incidents by Decade, 1968-2017**

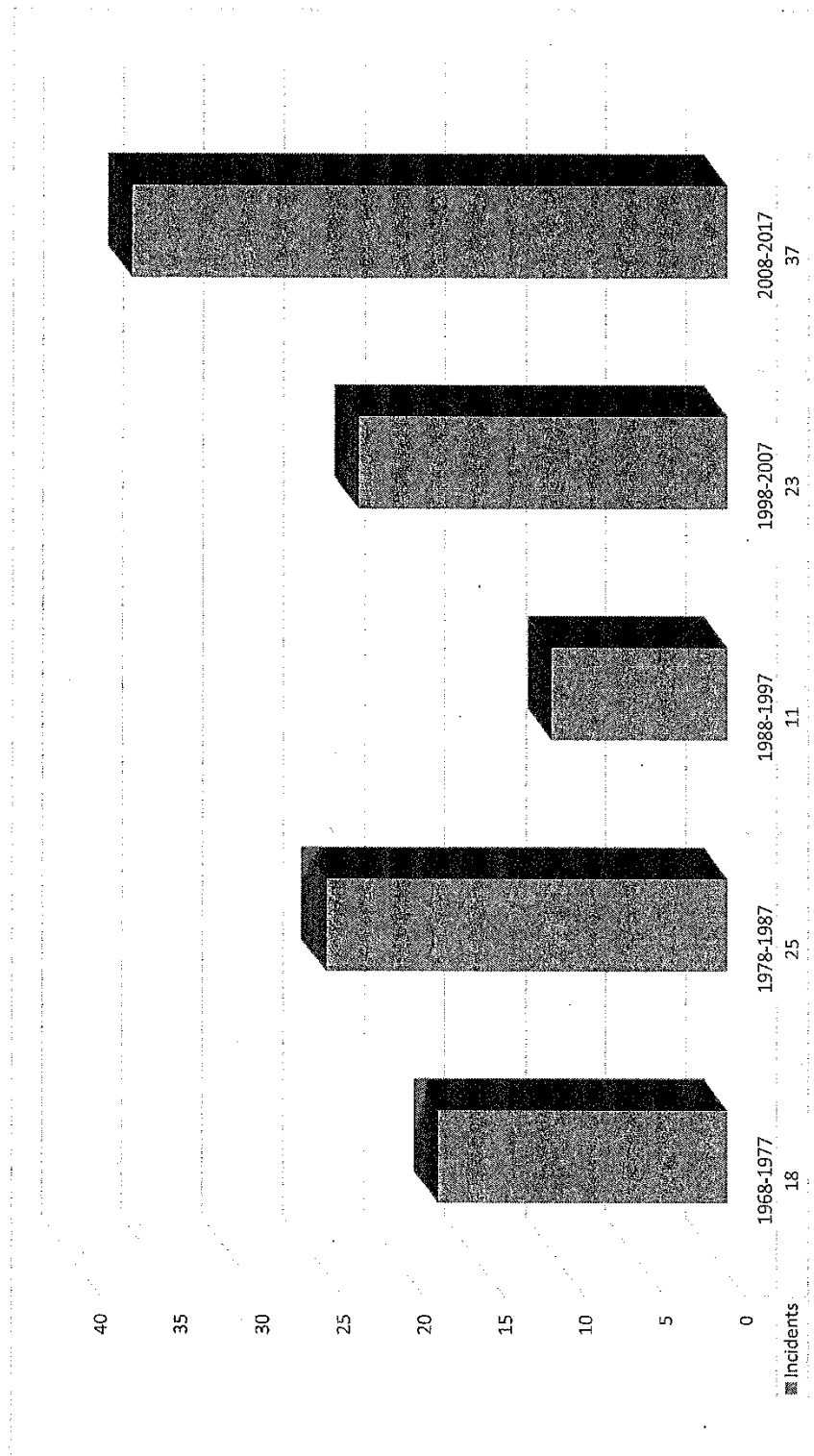
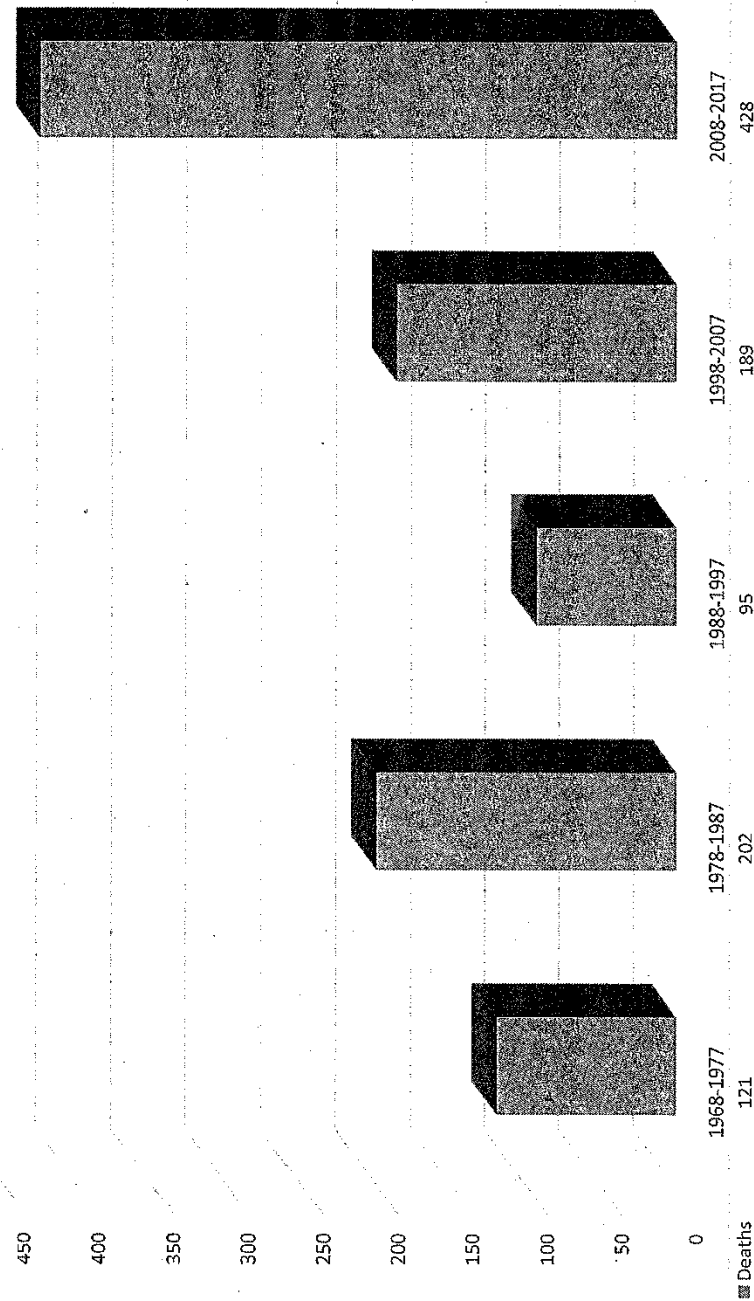


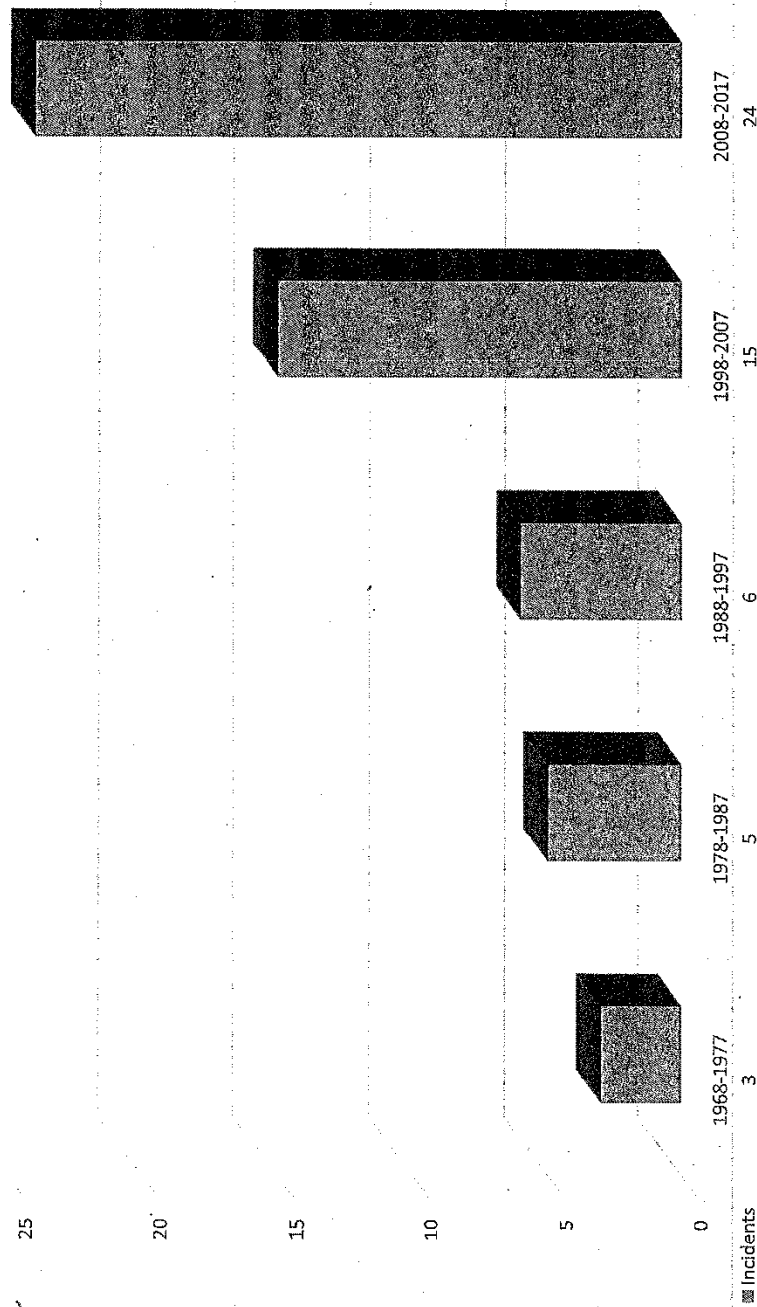
Exhibit 3  
 Page 00114



Appendix B – Figure 2  
Gun Massacre Deaths by Decade, 1968-2017

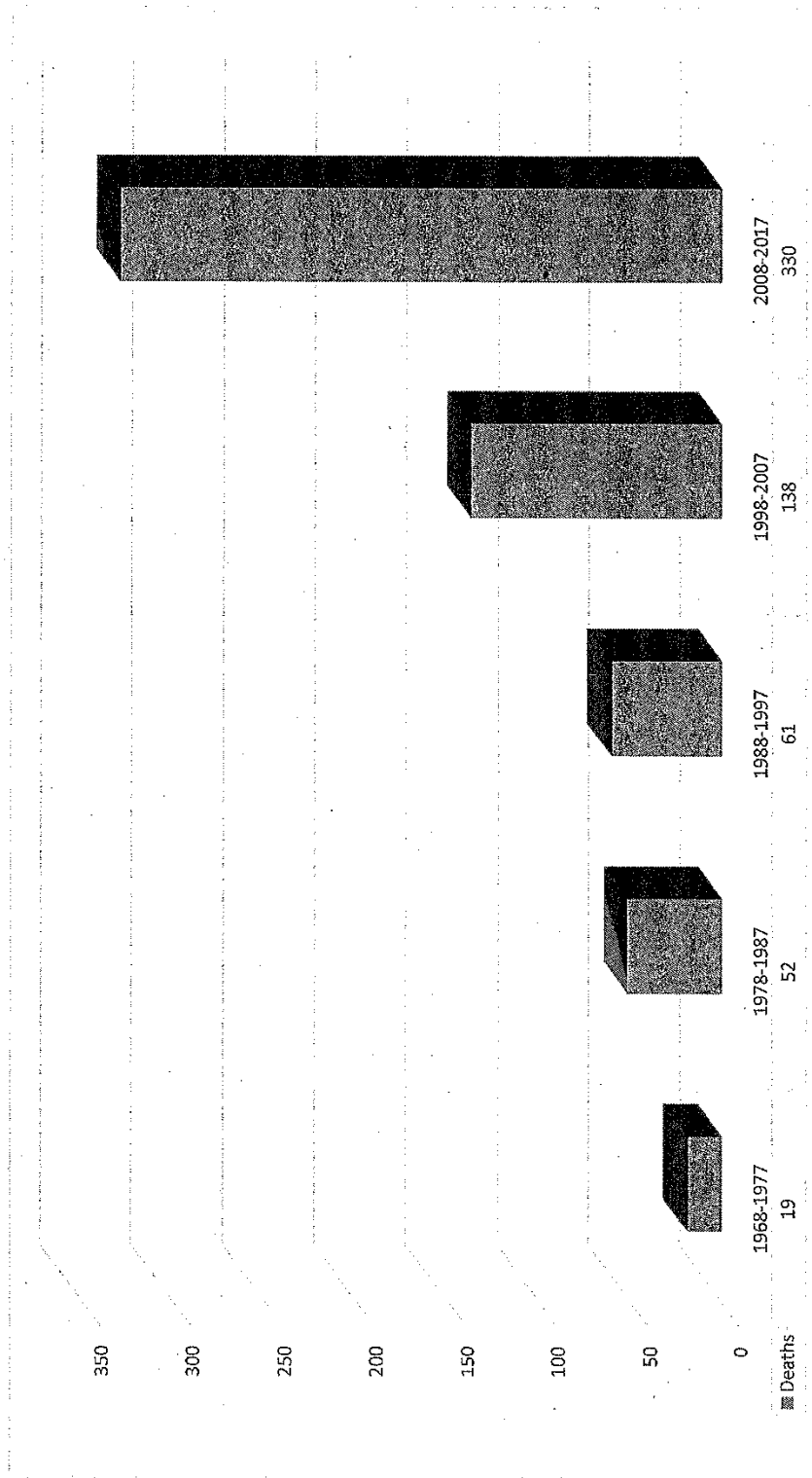


Appendix B – Figure 3  
Gun Massacre Incidents Involving LCMs by Decade, 1968-2017

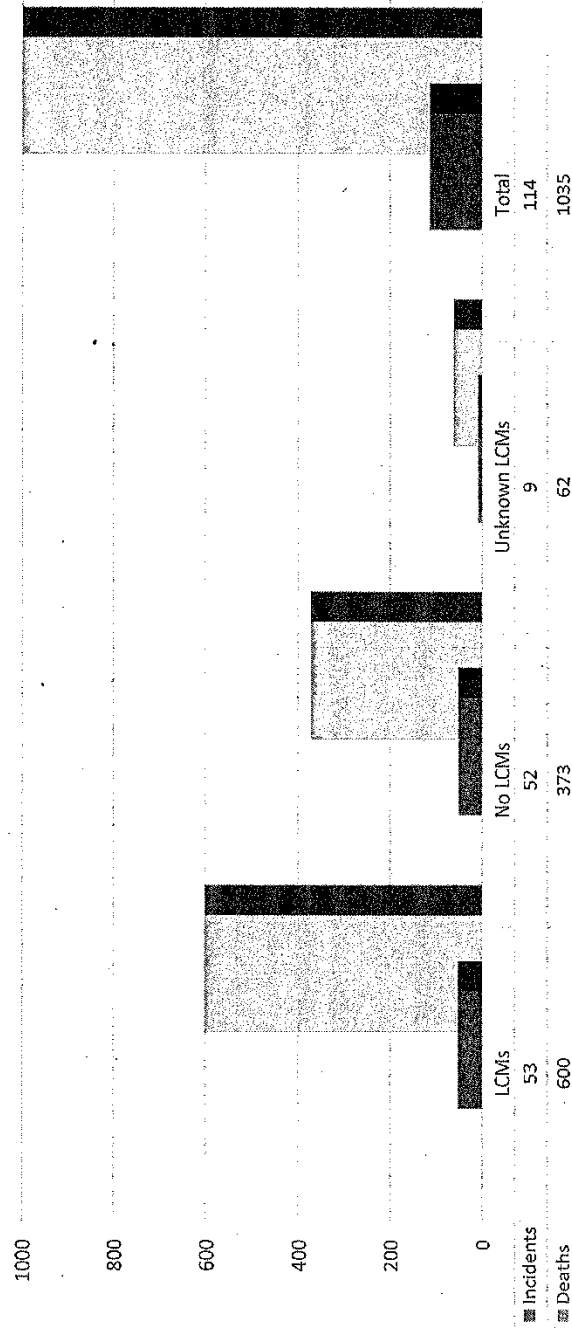


Appendix B – Figure 4

Gun Massacre Deaths from Incidents Involving LCMs by Decade, 1968-2017

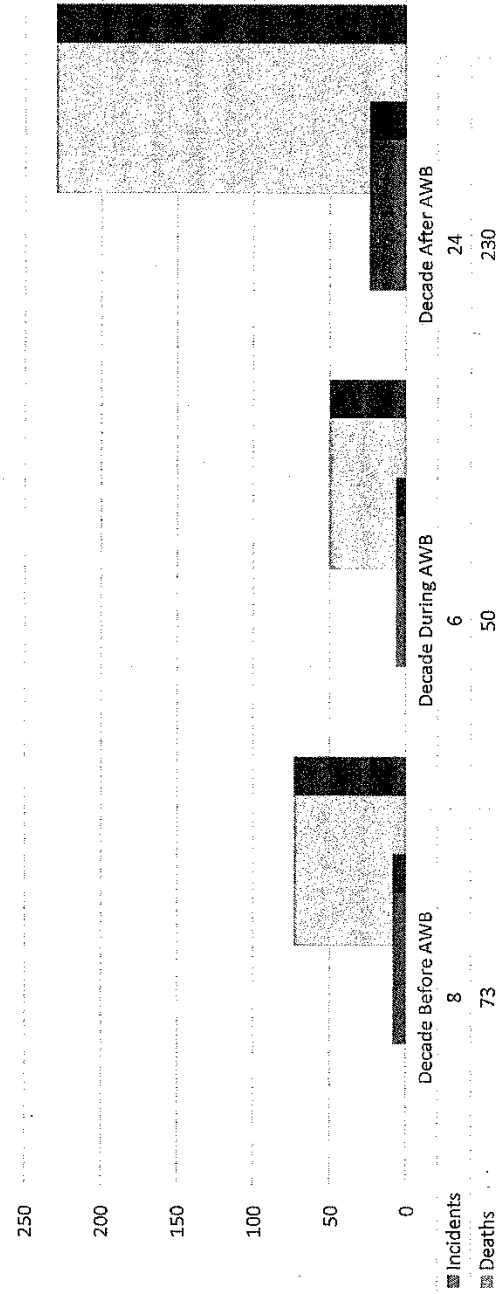


**Appendix B – Figure 5**  
**Gun Massacre Incidents and Deaths by Magazine Capacity, 1968-2017**



Appendix B – Figure 6

LCM-Involving Gun Massacre Incidents and Deaths by Decade Before, During, and After the Federal Assault Weapons Ban



Note: The Federal Assault Weapons Ban was in effect from September 13, 1994, through September 12, 2004.

## **EXHIBIT 3**

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10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13  
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,  
17

18 v.

19 **XAVIER BECERRA, in his official**  
20 **capacity as Attorney General of the**  
**State of California, et al.,**

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

17-cv-1017-BEN-JLB

**EXPERT REPORT OF**  
**DR. CHRISTOPHER S. KOPER**

Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

EXPERT REPORT OF DR. CHRISTOPHER S. KOPER (17-cv-1017-BEN-JLB)



1                   **EXPERT REPORT OF DR. CHRISTOPHER S. KOPER**

2           **I.     ASSIGNMENT**

3           I was retained by counsel for Defendant California Attorney General Xavier  
4           Becerra for the purpose of preparing an expert report on the potential efficacy of  
5           California's new ban on possession of large capacity ammunition magazines.

6           **II.    QUALIFICATIONS AND BACKGROUND**

7           I am an Associate Professor for the Department of Criminology, Law and  
8           Society at George Mason University, in Fairfax, Virginia and the principal fellow  
9           of George Mason's Center for Evidence-Based Crime Policy. I have been studying  
10          firearms issues since 1994. My primary areas of focus are firearms policy and  
11          policing issues. My credentials, experience, and background are stated in my  
12          curriculum vitae, a true and correct copy of which is attached as Exhibit A.

13          In 1997, my colleague Jeffrey Roth and I conducted a study on the impact of  
14          Title XI, Subtitle A of the Violent Crime Control and Law Enforcement Act of  
15          1994 (hereinafter the "federal assault weapons ban" or the "federal ban"), for the  
16          United States Department of Justice and the United States Congress.<sup>1</sup> I updated the  
17          original 1997 study in 2004<sup>2</sup> and briefly revisited the issue again by re-examining  
18          my 2004 report in 2013.<sup>3</sup> To my knowledge, these are the most comprehensive  
19          studies to have examined the efficacy of the federal ban on assault weapons and  
20          ammunition feeding devices holding more than ten rounds of ammunition

21          <sup>1</sup> Jeffrey A. Roth & Christopher S. Koper, *Impact Evaluation of the Public Safety*  
22          *and Recreational Firearms Use Protection Act of 1994: Final Report* (1997),  
23          attached hereto as Exhibit B (hereinafter, "*Impact Evaluation*").

24          <sup>2</sup> Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons*  
25          *Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (2004), attached  
26          hereto as Exhibit C (hereinafter, "*Updated Assessment of the Federal Assault*  
27          *Weapons Ban*").

28          <sup>3</sup> Christopher S. Koper, *America's Experience with the Federal Assault Weapons*  
Ban, 1994- 2004: Key Findings and Implications, ch. 12, 157-171, in *Reducing*  
Gun Violence in America: Informing Policy with Evidence (Daniel S. Webster &  
Jon S. Vernick eds. 2013), attached hereto as Exhibit D (hereinafter "*America's*  
*Experience with the Federal Assault Weapons Ban*").

(hereinafter referred to as “large-capacity magazines” or “LCMs”).<sup>4</sup> My 1997 study was based on limited data, especially with regard to the criminal use of large-capacity magazines. As a result, my conclusions on the impact of the federal ban are most accurately and completely set forth in my 2004 and 2013 reports.

This report summarizes some of the key findings of those studies regarding the federal ban and its impact on crime prevention and public safety. I also discuss the results of a new research study I directed that investigated current levels of criminal activity with high capacity semiautomatic weapons as measured in several local and national data sources.<sup>5</sup> Based upon my findings, I then provide some opinions on the potential impact and efficacy of prohibitions and restrictions on large-capacity magazines, like those contained in California Penal Code section 32310 (hereinafter, “Section 32310”).

As discussed below, it is my considered opinion that California’s LCM ban has the potential to prevent and limit shootings, particularly those involving high numbers of shots and victims, and thus is likely to advance California’s interests in protecting its populace from the dangers of such shootings.

### III. RETENTION AND COMPENSATION

I am being compensated for my time on this case on an hourly basis at a rate of \$150 per hour. My compensation is not contingent on the results of my analysis or the substance of my testimony.

<sup>4</sup> As discussed below, there have been some additional academic and non-academic studies that have examined more limited aspects of the ban’s effects.

<sup>5</sup> Christopher S. Koper et al., *Criminal Use of Assault Weapons and High Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources*, Journal of Urban Health (October 2, 2017) DOI 10.1007/s11524-017-0205-7, available at [http://em.rdcu.be/wf/click?upn=KP7O1RED-2BID0F9LDqGvESctPCwMbqH-2BMWBUHgPpsN5I-3D\\_aLASUIDI3T0TZ55mA5wcKyxIF1pNAQ-2FS0QcxHHbBP65v2wnicdu8DEAbXOHNYJipa4WGEYqVQvkFcdtrFEsYjZAuWYuv7oZRi5azzY-2B5kRSTavg1BTwrdrnUNdQZVTcHVKQjHpPzJRCNjuQtSjVJuN-2F-2BNTasWPxOOVBf1pq1NLGA3TvS1NOWbCbQHSILbi3GAhoVkr0iwOIrRLgL8INPZXWLjKU6PJ-2F84jalWCxLaJiY74BdpLrwOkfJQ3Cvy-2F04YQt1UhlstJNdtP7DBeGw-3D-3D](http://em.rdcu.be/wf/click?upn=KP7O1RED-2BID0F9LDqGvESctPCwMbqH-2BMWBUHgPpsN5I-3D_aLASUIDI3T0TZ55mA5wcKyxIF1pNAQ-2FS0QcxHHbBP65v2wnicdu8DEAbXOHNYJipa4WGEYqVQvkFcdtrFEsYjZAuWYuv7oZRi5azzY-2B5kRSTavg1BTwrdrnUNdQZVTcHVKQjHpPzJRCNjuQtSjVJuN-2F-2BNTasWPxOOVBf1pq1NLGA3TvS1NOWbCbQHSILbi3GAhoVkr0iwOIrRLgL8INPZXWLjKU6PJ-2F84jalWCxLaJiY74BdpLrwOkfJQ3Cvy-2F04YQt1UhlstJNdtP7DBeGw-3D-3D) (last visited Oct. 5, 2017).

1 **IV. BASES FOR OPINION AND MATERIAL COVERED**

2 The opinions I provide in this expert report are based solely on the findings of  
3 the materials cited in the footnotes and text, as well as the materials attached as  
4 exhibits to this report.

5 **V. OPINION**

6 **A. Summary of Findings**

7 Based on my research, I found, among other things, that assault pistols are  
8 used disproportionately in crime in general, and that assault weapons more broadly  
9 were disproportionately used in murder and other serious crimes in some  
10 jurisdictions for which there was data. I also found that assault weapons and other  
11 firearms with large capacity magazines are used in a higher share of mass public  
12 shootings and killings of law enforcement officers.

13 The evidence also suggests that gun attacks with semiautomatics—especially  
14 assault weapons and other guns equipped with large capacity magazines—tend to  
15 result in more shots fired, more persons wounded, and more wounds per victim,  
16 than do gun attacks with other firearms. There is evidence that victims who receive  
17 more than one gunshot wound are substantially more likely to die than victims who  
18 receive only one wound. Thus, it appears that crimes committed with these  
19 weapons are likely to result in more injuries, and more lethal injuries, than crimes  
20 committed with other firearms.

21 In addition, there is some evidence to suggest that assault weapons are more  
22 attractive to criminals, due to the weapons' military-style features and particularly  
23 large magazines. Based on these and other findings in my studies discussed below,  
24 it is my considered opinion that California's recently enacted ban on large capacity  
25 magazines, which is in some ways stronger than the federal ban that I studied, is  
26 likely to advance California's interest in protecting public safety. Specifically, it  
27 has the potential to: (1) reduce the number of crimes committed with firearms with  
28 large capacity magazines; (2) reduce the number of shots fired in gun crimes; (3)

1 reduce the number of gunshot victims in such crimes; (4) reduce the number of  
2 wounds per gunshot victim; (5) reduce the lethality of gunshot injuries when they  
3 do occur; and (6) reduce the substantial societal costs that flow from shootings.

4 **B. Criminal Uses and Dangers of Large-Capacity Magazines**

5 Large-capacity magazines allow semiautomatic weapons to fire more than 10  
6 rounds without the need for a shooter to reload the weapon.<sup>6</sup> Large-capacity  
7 magazines come in a variety of sizes, including but not limited to 17-round  
8 magazines, 25- or 30-round magazines, and drums with the capacity to accept up to  
9 100 rounds.

10 The ability to accept a detachable magazine, including a large-capacity  
11 magazine, is a common feature of guns typically defined as assault weapons.<sup>7</sup> In  
12 addition, LCMs are frequently used with guns that fall outside of the definition of  
13 an assault weapon.

14 LCMs are particularly dangerous because they facilitate the rapid firing of  
15 high numbers of rounds. This increased firing capacity thereby potentially  
16 increases injuries and deaths from gun violence. *See Updated Assessment of the*  
17 *Federal Assault Weapons Ban* at 97 (noting that “studies ... suggest that attacks  
18 with semiautomatics—including [assault weapons] and other semiautomatics with  
19 LCMs—result in more shots fired, persons wounded, and wounds per victim than  
20 do other gun attacks”).

21  
22 <sup>6</sup> A semiautomatic weapon is a gun that fires one bullet for each pull of the trigger  
23 and, after each round of ammunition is fired, automatically loads the next round and  
24 cocks itself for the next shot, thereby permitting a faster rate of fire relative to non-  
25 automatic firearms. Semiautomatics are not to be confused with fully automatic  
26 weapons (*i.e.*, machine guns), which fire continuously so long as the trigger is  
27 depressed. Fully automatic weapons have been illegal to own in the United States  
28 without a federal permit since 1934. *See Updated Assessment of the Federal*  
*Assault Weapons Ban*, at 4 n.1.

<sup>7</sup> Although the precise definition used by various federal, state, and local statutes  
has varied, the term “assault weapons” generally includes semiautomatic pistols,  
rifles, and shotguns with military features conducive to military and potential  
criminal applications but unnecessary in shooting sports or for self-defense.

1 As such, semiautomatics equipped with LCMs have frequently been employed  
2 in highly publicized mass shootings, and are disproportionately used in the murders  
3 of law enforcement officers, crimes for which weapons with greater firepower  
4 would seem particularly useful. *See Updated Assessment of the Federal Assault*  
5 *Weapons Ban* at 14-19, 87.

6 During the 1980s and early 1990s, semiautomatic firearms equipped with  
7 LCMs were involved in a number of highly publicized mass murder incidents that  
8 first raised public concerns and fears about the accessibility of high powered,  
9 military-style weaponry and other guns capable of discharging high numbers of  
10 rounds in a short period of time. For example:

- 11 • On July 18, 1984, James Huberty killed 21 persons and wounded 19 others in  
12 a San Ysidro, California McDonald's restaurant, using an Uzi carbine, a  
13 shotgun, and another semiautomatic handgun, and equipped with a 25-round  
14 LCM;
- 15 • On January 17, 1989, Patrick Purdy used a civilian version of the AK-47  
16 military rifle and a 75-round LCM to open fire in a Stockton, California  
17 schoolyard, killing five children and wounding 29 other persons;
- 18 • On September 14, 1989, Joseph Wesbecker, armed with an AK-47 rifle, two  
19 MAC-11 handguns, a number of other firearms, and multiple 30-round  
20 magazines, killed seven and wounded 15 people at his former workplace in  
21 Louisville, Kentucky;
- 22 • On October 16, 1991, George Hennard, armed with two semiautomatic  
23 handguns with LCMs (and reportedly a supply of extra LCMs), killed 22  
24 people and wounded another 23 in Killeen, Texas;
- 25 • On July 1, 1993, Gian Luigi Ferri, armed with two Intratec TEC-DC9 assault  
26 pistols and 40- to 50-round magazines, killed nine and wounded six at the  
27 law offices of Pettit & Martin in San Francisco, California; and
- 28 • On December 7, 1993, Colin Ferguson, armed with a handgun and multiple  
LCMs, opened fire on commuters on a Long Island Rail Road train, killing 6  
and wounding 19.

1 *See Updated Assessment of the Federal Assault Weapons Ban* at 14.<sup>8</sup>

2 More recently, in the years since the expiration of the federal ban in 2004,  
3 there has been another well-publicized series of mass shooting incidents involving  
4 previously banned assault weapons and/or LCMs. Some of the more notorious of  
5 these incidents include:

- 6 • On April 16, 2007, Seung-Hui Cho, armed with a handgun and multiple  
7 LCMs, killed 33 (including himself) and wounded 23 on the campus of  
8 Virginia Tech in Blacksburg, Virginia;
- 9 • On January 8, 2011, Jared Loughner, armed with a handgun and multiple  
10 LCMs, killed 6 and wounded 13, including Congresswoman Gabrielle  
11 Giffords, in Tucson, Arizona;
- 12 • On July 20, 2012, James Holmes, armed with a Smith & Wesson M&P 15  
13 assault rifle, 100-round LCMs, and other firearms, killed 12 and wounded 58  
14 in a movie theater in Aurora, Colorado;
- 15 • On December 14, 2012, Adam Lanza, armed with a Bushmaster AR-15-style  
16 assault rifle, two handguns, and multiple LCMs, killed 26 (20 of whom were  
17 young children) and wounded 2 at Sandy Hook Elementary School in  
18 Newtown, Connecticut;
- 19 • On December 2, 2015, Syed Rizwan Farook and Tashfeen Malik, armed with  
20 2 AR-15 style rifles, semiautomatic handguns, and LCMs, killed 14 and  
21 injured 21 at a workplace party in San Bernardino, California; and

22 <sup>8</sup> Additional details regarding these incidents were obtained from: Violence Policy  
23 Center, *Mass Shootings in the United States Involving High-Capacity Ammunition*  
24 *Magazines*, available at [http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf)  
25 (hereinafter, "Violence Policy Center Report"); Mark Follman, Gavin Aronsen &  
26 Deanna Pan, *US Mass Shootings, 1982-2012: Data from Mother Jones'*  
27 *Investigation*, updated Feb. 27, 2013, available at [http://www.motherjones.com/](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data)  
28 [politics/2012/12/mass-shootings-mother-jones-full-data](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data) (hereinafter, "Follman,  
Aronsens & Pan 2013"); and Mark Follman, Gavin Aronsen & Jaeah Lee, *More*  
*Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines*,  
Feb. 27, 2013, available at [http://www.motherjones.com/politics/2013/02/assault-](http://www.motherjones.com/politics/2013/02/assault-weapons-highcapacity-magazines-mass-shootings-feinstein)  
[weapons-highcapacity-magazines-mass-shootings-feinstein](http://www.motherjones.com/politics/2013/02/assault-weapons-highcapacity-magazines-mass-shootings-feinstein) (hereinafter, "Pollman,  
Aronsens & Lee 2013").



- 1       • On June 12, 2016, Omar Mateen, armed with a Sig Sauer MCX rifle, a Glock  
2       17 semiautomatic handgun, and LCMs, killed 49 and injured 53 in a nightclub  
3       in Orlando, Florida.<sup>9</sup>

4       There is evidence to suggest that the particularly large ammunition capacities  
5       of assault weapons, along with their military-style features, are more attractive to  
6       criminals than lawful users. *See Updated Assessment of the Federal Assault*  
7       *Weapons Ban* at 17-18. The available evidence also suggests that large-capacity  
8       magazines, along with assault weapons, pose particular dangers by their large and  
9       disproportionate involvement in two aspects of crime and violence: mass shootings  
10      and murders of police. *See Updated Assessment of the Federal Assault Weapons*  
11      *Ban* at 14- 19, 87.

12      With respect to mass shootings, the available evidence before the federal  
13      assault weapons ban was enacted in 1994 and after its expiration in 2004 both  
14      support this conclusion. Prior to the federal ban, assault weapons or other  
15      semiautomatics with LCMs were involved in 6, or 40%, of 15 mass shooting  
16      incidents occurring between 1984 and 1993 in which 6 or more persons were killed  
17      or a total of 12 or more were wounded. *See Updated Assessment of the Federal*  
18      *Assault Weapons Ban* at 14.<sup>10</sup>

19      More recently, a *Mother Jones* media investigation and compilation of 62  
20      public mass shooting incidents that involved the death of four or more people, over  
21      the period 1982-2012, showed that, of the cases where magazine capacity could be  
22      determined, 31 of 36 cases, or 86%, involved a large-capacity magazine. Including  
23

24      <sup>9</sup> For details on these incidents, see Marc Follman et al., *US Mass Shootings, 1982-*  
25      *2017: Data from Mother Jones' Investigation*, Mother Jones (June 14, 2017)  
26      available at [http://www.motherjones.com/politics/2012/12/mass-shootings-mother-](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/)  
27      jones-full-data/.

28      <sup>10</sup> These figures are based on tabulations conducted by my research team and me  
using data reported in Gary Kleck, *Targeting Guns: Firearms and Their Control*  
(1997) at 124-26.



1 all cases, including those where magazine capacity could not be determined, exactly  
2 half of the cases (31 of 62) are known to have involved an LCM.<sup>11</sup>

3 LCMs, because they can be and are used both with assault weapons and guns  
4 that fall outside the definition of an assault weapon, appear to present even greater  
5 dangers to crime and violence than assault weapons alone.

6 Prior to the federal assault weapons ban, for example, guns with LCMs were  
7 used in roughly 13-26% of most gun crimes (as opposed to somewhere between  
8 about 1% and 8% for assault weapons alone). *See Updated Assessment of the*  
9 *Federal Assault Weapons Ban* at 15, 18-19; *see also America's Experience with the*  
10 *Federal Assault Weapons Ban* at 161-62. More recent data discussed below  
11 suggest that guns with LCMs now represent an even higher share of guns used in  
12 crime.

13 It also appears that guns with LCMs have been used disproportionately in  
14 murders of police. Specifically, data from prior to the federal ban indicated that  
15 LCMs were used in 31% to 41% of gun murders of police in contrast to their use in  
16 13-26% of gun crimes overall. *See Updated Assessment of the Federal Assault*  
17 *Weapons Ban* at 18; *see also America's Experience with the Federal Assault*  
18 *Weapons Ban* at 162. More recent data discussed below also show a similar pattern  
19 of guns with LCMs being more common among weapons used in gun murders of  
20 police.

21 In addition, the available evidence suggests that gun attacks with  
22 semiautomatics—including both assault weapons and guns equipped with LCMs—  
23 tend to result in more shots fired, more persons wounded, and more wounds  
24 inflicted per victim than do attacks with other firearms. *See Updated Assessment of*

25 <sup>11</sup> This investigation and compilation of data on mass shootings was done by  
26 reporters at *Mother Jones* magazine. *See* Follman, Aronsen & Pan 2013; *see also*  
27 Follman Aronsen & Lee 2013; Mark Follman, Gavin Aronsen & Deanna Pan, *A*  
28 *Guide to Mass Shootings in America* (updated Feb. 27, 2013), available at  
<http://www.motherjones.com/politics/2012/07/mass-shootings-map>.

1 *the Federal Assault Weapons Ban* at 97; *see also America's Experience with the*  
2 *Federal Assault Weapons Ban* at 166-67.

3 For example, in mass shooting incidents that resulted in at least 6 deaths or at  
4 least 12 total gunshot victims from 1984 through 1993, offenders who clearly  
5 possessed assault weapons or other semiautomatics with LCMs wounded or killed  
6 an average of 29 victims in comparison to an average of 13 victims wounded or  
7 killed by other offenders. *See Updated Assessment of the Federal Assault Weapons*  
8 *Ban* at 85-86; *see also America's Experience with the Federal Assault Weapons*  
9 *Ban* at 167.

10 Working under my direction, Luke Dillon, a graduate student at George  
11 Mason University, recently analyzed the *Mother Jones* data from 1982 through  
12 2012 for his Master's thesis, and compared the number of deaths and fatalities of  
13 the 62 mass shootings identified therein to determine how the presence of assault  
14 weapons and LCMs impacted the outcome.<sup>12</sup> With respect to LCMs, Mr. Dillon  
15 compared cases where an LCM was known to have been used (or at least possessed  
16 by the shooter) against cases where either an LCM was not used or not known to  
17 have been used. He found that the LCM cases (which included assault weapons)  
18 had significantly higher numbers of fatalities and casualties: an average of 10.19  
19 fatalities in LCM cases compared to 6.35 fatalities in non-LCM/unknown cases.  
20 Mr. Dillon also found an average of 12.39 people were shot but not killed in public  
21 mass shootings involving LCMs, compared to just 3.55 people shot in the non-  
22 LCM/unknown LCM shootings. These findings reflect a total victim differential of  
23 22.58 killed or wounded in the LCM cases compared to 9.9 in the non-

24  
25  
26 <sup>12</sup> See Luke Dillon, *Mass Shootings in the United States: An Exploratory Study of*  
27 *the Trends from 1982 to 2012 (2013)* (unpublished M.A. thesis, George Mason  
28 *University, Department of Criminology, Law and Society).*

1 LCM/unknown LCM cases.<sup>13</sup> All of these differences were statistically significant  
2 and not a result of mere chance.

3 Similarly, a study of handguns attacks in Jersey City, New Jersey during the  
4 1990s found that the average number of victims wounded in gunfire incidents  
5 involving semiautomatic pistols was 15% higher than in those involving revolvers.  
6 The study further found that attackers using semiautomatics to fire more than ten  
7 shots were responsible for nearly 5% of all gunshot victims and that 100% of these  
8 incidents involved injury to at least one victim. *See Updated Assessment of the*  
9 *Federal Assault Weapons Ban* at 84-86, 90-91; *see also America's Experience with*  
10 *the Federal Assault Weapons Ban* at 167.<sup>14</sup>

11 Similar evidence comes from other local studies. Between 1992 and 1995,  
12 gun homicide victims in Milwaukee who were killed by guns with LCMs had 55%  
13 more gunshot wounds than those victims killed by non-LCM firearms. Further, a  
14 study of gun homicides in Iowa City (IA), Youngstown (OH), and Bethlehem (PA)  
15 from 1994 through 1998 found gun homicide victims killed by pistols averaged 4.5  
16 gunshot wounds as compared to 2 gunshot wounds for those killed by revolvers.  
17 *See Updated Assessment of the Federal Assault Weapons Ban* at 86.

18 And, in an analysis I conducted of guns recovered by police in Baltimore, I  
19 also found LCMs to be associated with gun crimes that resulted in more lethal and  
20 injurious outcomes. For instance, I found, among other things, that guns used in  
21 shootings that resulted in gunshot victimizations were 17% to 26% more likely to

22  
23 <sup>13</sup> The patterns were also very similar when comparing the LCM cases against just  
24 those cases in which it was clear that an LCM was not used (though this was a very  
25 small number).

26 <sup>14</sup> Note that these data were collected in the 1990s during the years of the federal  
27 LCM ban and in a city that was also subject to state-level LCM restrictions on  
28 magazines holding more than 15 rounds. Hence, these findings may not generalize  
well to other locations and the current timeframe. More specifically, given recent  
increases in the use of firearms with LCMs as discussed below, the Jersey City  
results may understate the current share of gunshot victimizations resulting from  
incidents with more than 10 shots fired.

1 have LCMs than guns used in gunfire cases with no wounded victims, and guns  
2 linked to murders were 8% to 17% more likely to have LCMs than guns linked to  
3 non-fatal gunshot victimizations. *See Updated Assessment of the Federal Assault*  
4 *Weapons Ban* at 87.

5 In short, while tentative, the available evidence suggests more often than not  
6 that attacks with semiautomatics, particularly those equipped with LCMs, result in  
7 more shots fired, leading both to more injuries and injuries of greater severity.  
8 Such attacks also appear to result in more wounds per victim. This is significant  
9 because gunshot victims who are shot more than once are more than 60% more  
10 likely to die than victims who receive only one gunshot wound. *See Updated*  
11 *Assessment of the Federal Assault Weapons Ban* at 87 (citing studies showing 63%  
12 increase and 61% increase, respectively, in fatality rates among gunshot victims  
13 suffering more than one wound).

14 In addition, diminishing the number of victims of shootings by even a small  
15 percentage can result in significant cost savings because of the significant social  
16 costs of shootings, as discussed herein.

### 17 C. Effects of the 1994 Federal Assault Weapons Ban

#### 18 1. Provisions of the Federal Assault Weapons Ban

19 Enacted on September 13, 1994—in the wake of many of the mass shootings  
20 described above—the federal assault weapons ban imposed prohibitions and  
21 restrictions on the manufacture, transfer, and possession of both certain  
22 semiautomatic firearms designated as assault weapons and certain LCMs. Pub. L.  
23 No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996-2010 (codified as former  
24 18 U.S.C. § 922(v), (w)(1) (1994).

25 The federal assault weapons ban was to expire after ten years, unless renewed  
26 by Congress. Pub. L. No. 103-322, tit. XI, § 110105(2). Congress did not renew  
27  
28

1 the ban, and thus, by its own terms, the federal ban expired on September 13,  
2 2004.<sup>15</sup>

3 **a. Banned Assault Weapons and Features**

4 As noted, the federal assault weapons ban imposed a ten-year ban on the  
5 manufacture, transfer, or possession of what the statute defined as “semiautomatic  
6 assault weapons.” The federal ban was not a prohibition on all semiautomatic  
7 firearms; rather, it was directed against those semiautomatics having features that  
8 are useful in military and criminal applications but that are unnecessary in shooting  
9 sports or for self-defense.

10 Banned firearms were identified under the federal law in two ways: (i) by  
11 specific make and model; and (ii) by enumerating certain military-style features and  
12 generally prohibiting those semiautomatic firearms having two or more of those  
13 features.

14 First, the federal ban specifically prohibited 18 models and variations of  
15 semiautomatic guns by name (*e.g.*, the Intratec TEC-9 pistol and the Colt AR-15  
16 rifle), as well as revolving cylinder shotguns. This list also included a number of  
17 foreign rifles that the federal government had banned from importation into the  
18 country beginning in 1989 (*e.g.*, the Avtomat Kalashnikov models). And, indeed,  
19 several of the guns banned by name were civilian copies of military weapons and  
20 accepted ammunition magazines made for those military weapons. A list of the  
21 weapons banned by name in the 1994 law is set forth in Table 2-1 of the *Updated*  
22 *Assessment of the Federal Assault Weapons Ban* at 5.

23 Second, the federal assault weapons ban contained a “features test” provision  
24 that generally prohibited other semiautomatic guns having two or more military-

25 <sup>15</sup> I understand that California prohibited assault weapons in 1989, before the  
26 federal ban, but grandfathered most existing assault weapons; and that California  
27 prohibited large-capacity magazines in 2000 but grandfathered existing LCMs. I  
28 am not aware of any specific studies of the effects of these California laws on gun  
markets or gun violence.

1 style features. Examples of such features include pistol grips on rifles, flash  
2 suppressors, folding rifle stocks, threaded barrels for attaching silencers, and the  
3 ability to accept detachable magazines. This “features test” of the federal ban is  
4 described more fully in Table 2-2 of the *Updated Assessment of the Federal Assault*  
5 *Weapons Ban* at 6, and in Table 12-1 of *America’s Experience with the Federal*  
6 *Assault Weapons Ban* at 160.

7 **b. Banned Large-Capacity Magazines**

8 The federal ban also prohibited most ammunition feeding devices holding  
9 more than ten rounds of ammunition (which I have referred to herein as “large-  
10 capacity magazines” or “LCMs”). The federal ban on LCMs extended to LCMs or  
11 similar devices that had the capacity to accept more than ten rounds of ammunition,  
12 or that could be “readily restored or converted or to accept” more than ten rounds of  
13 ammunition.<sup>16</sup>

14 **c. Exemptions and Limitations to the Federal Ban**

15 The 1994 federal assault weapons ban contained several important exemptions  
16 that limited its potential impact, especially in the short-term. *See Updated*  
17 *Assessment of the Federal Assault Weapons Ban* at 10-11.

18 First, assault weapons and LCMs manufactured before the effective date of the  
19 ban were “grandfathered” in and thus legal to own and transfer. Estimates suggest  
20 that there may have been upward of 1.5 million assault weapons and 25-50 million  
21 LCMs thus exempted from the federal ban. Moreover, an additional 4.8 million  
22 pre-ban LCMs were imported into the country from 1994 through 2000 under the  
23 grandfathering exemption. Importers were also authorized to import another 42  
24 million pre-ban LCMs, which may have arrived after 2000. *See Updated*

25 <sup>16</sup> Technically, the ban prohibited any magazine, belt, drum, feed strip, or similar  
26 device that had the capacity to accept more than 10 rounds of ammunition, or which  
27 could be readily converted or restored to accept more than 10 rounds of  
28 ammunition. The ban exempted attached tubular devices capable of operating only  
with 22 caliber rimfire (*i.e.*, low velocity) ammunition.



1 *Assessment of the Federal Assault Weapons Ban* at 10; see also *America's*  
 2 *Experience with the Federal Assault Weapons Ban* at 160-61.

3 Furthermore, although the 1994 law banned “copies or duplicates” of the  
 4 named firearms banned by make and model, federal authorities emphasized exact  
 5 copies in enforcing this provision. Similarly, the federal ban did not apply to a  
 6 semiautomatic weapon possessing only one military-style feature listed in the ban’s  
 7 features test provision.<sup>17</sup> Thus, many civilian rifles patterned after military  
 8 weapons were legal under the ban with only slight modifications. See *Updated*  
 9 *Assessment of the Federal Assault Weapons Ban* at 10-11.<sup>18</sup>

#### 10 **D. Impact of the Federal Assault Weapons Ban**

11 This section of my report discusses the empirical evidence of the impact of the  
 12 federal assault weapons ban. I understand that the Plaintiffs in this litigation  
 13 contend that California’s prohibition on the possession of LCMs will not have an  
 14 effect on crime or gunshot victimization because criminal users of firearms will not  
 15 comply with California’s ban. In my opinion, that contention misunderstands the  
 16 effect of possession bans. The issue is not only whether criminals will be unwilling  
 17 to comply with such laws, though this could be an important consideration  
 18 depending on the severity of penalties for possession or use. The issue is also how  
 19 possession bans affect the availability of weapons for offenders. Examining the

20  
 21 <sup>17</sup> It should be noted, however, that any firearms imported into the country must  
 22 still meet the “sporting purposes test” established under the federal Gun Control  
 23 Act of 1968. In 1989, the federal Bureau of Alcohol, Tobacco, Firearms and  
 24 Explosives (“ATF”) determined that foreign semiautomatic rifles having any one of  
 25 a number of named military features (including those listed in the features test of  
 26 the 1994 federal assault weapons ban) fail the sporting purposes test and cannot be  
 27 imported into the country. In 1998, the ability to accept an LCM made for a  
 28 military rifle was added to the list of disqualifying features. Consequently, it was  
 possible for foreign rifles to pass the features test of the federal assault weapons  
 ban, but not meet the sporting purposes test for imports. See *Updated Assessment*  
*of the Federal Assault Weapons Ban* at 10 n.7.

<sup>18</sup> Examples of some of these modified, legal versions of banned guns that  
 manufacturers produced in an effort to evade the ban are listed in Table 2-1 of the  
*Updated Assessment of the Federal Assault Weapons Ban* at 5.



1 effects of the federal ban on LCMs could cast some light on how a state or local  
2 prohibition on possession of LCMs may diminish their availability for offenders. It  
3 is difficult, however, to assess trends in LCM use because of limited information.  
4 *See infra* at 20. For that reason, this section discusses the impacts of the federal ban  
5 both on LCM use, for which information is limited, and on ownership and use of  
6 assault weapons, for which there is more information.

### 7           **1. Assault Weapons**

8           Prior to the federal ban, the best estimates are that there were approximately  
9 1.5 million privately owned assault weapons in the United States (less than 1% of  
10 the total civilian gun stock). *See America's Experience with the Federal Assault*  
11 *Weapons Ban* at 160-61; *see also Updated Assessment of the Federal Assault*  
12 *Weapons Ban* at 10.

13           Although there was a surge in production of assault weapon-type firearms as  
14 Congress debated the ban in 1994, the federal ban's restriction of new assault  
15 weapon supply helped drive up the prices for many assault weapons (notably  
16 assault pistols) and appeared to make them less accessible and affordable to  
17 criminal users. *See America's Experience with the Federal Assault Weapons Ban* at  
18 162-63; *see also Updated Assessment of the Federal Assault Weapons Ban* at 25-  
19 38.

20           Analyses that my research team and I conducted of several national and local  
21 databases on guns recovered by law enforcement indicated that crimes with assault  
22 weapons declined after the federal assault weapons ban was enacted in 1994.

23           In particular, across six major cities (Baltimore, Miami, Milwaukee, Boston,  
24 St. Louis, and Anchorage), the share of gun crimes involving assault weapons  
25 declined by 17% to 72%, based on data covering all or portions of the 1995-2003  
26 post-ban period. *See Updated Assessment of the Federal Assault Weapons Ban* at  
27 2, 46-60; *see also America's Experience with the Federal Assault Weapons Ban* at  
28 163.

1 This analysis of local data is consistent with patterns found in the national data  
2 on guns recovered by law enforcement agencies around the country and reported to  
3 the ATF for investigative gun tracing.<sup>19</sup> Specifically, although the interpretation is  
4 complicated by changes in tracing practices that occurred during this time, the  
5 national gun tracing data suggests that use of assault weapons in crime declined  
6 with the onset of the 1994 federal assault weapons ban, as the percentage of gun  
7 traces for assault weapons fell 70% between 1992-93 and 2001-02 (from 5.4% to  
8 1.6%). And, notably, this downward trend did not begin until 1994, the year the  
9 federal ban was enacted. *See Updated Assessment of the Federal Assault Weapons*  
10 *Ban* at 2, 39-46, 51-52; *see also America's Experience with the Federal Assault*  
11 *Weapons Ban* at 163.<sup>20</sup>

12 In short, the analysis that my research team and I conducted indicates that the  
13 criminal use of assault weapons declined after the federal assault weapons ban was  
14 enacted in 1994, independently of trends in gun crime. *See Updated Assessment of*  
15 *the Federal Assault Weapons Ban* at 51-52; *see also America's Experience with the*  
16 *Federal Assault Weapons Ban* at 163.

17 This decline in crimes with assault weapons was due primarily to a reduction  
18 in the use of assault pistols. Assessment of trends in the use of assault rifles was  
19 complicated by the rarity of crimes with such rifles and by the substitution in some  
20 cases of post-ban rifles that were very similar to the banned models. In general,  
21 however, the decline in assault weapon use was only partially offset by substitution

22  
23 <sup>19</sup> A gun trace is an investigation that typically tracks a gun from its manufacture to  
24 its first point of sale by a licensed dealer. It is undertaken by the ATF, upon request  
25 by a law enforcement agency. The trace is generally initiated when the requesting  
26 law enforcement agency provides ATF with a trace request including identifying  
27 information about the firearm, such as make, model and serial number. For a full  
28 discussion of the use of ATF gun tracing data, see section 6.2 of *Updated*  
*Assessment of the Federal Assault Weapons Ban* at 40-46.

<sup>20</sup> These findings are consistent with other tracing analyses conducted by ATF and  
the Brady Center to Prevent Gun Violence. *See Updated Assessment of the Federal*  
*Assault Weapons Ban* at 44 n.43.

1 of post-ban assault weapon-type models. Even counting the post-ban models as  
2 assault weapons, the share of crime guns that were assault weapons fell 24% to  
3 60% across most of the local jurisdictions studied. Patterns in the local data  
4 sources also suggested that crimes with assault weapons were becoming  
5 increasingly rare as the years passed. *See Updated Assessment of the Federal*  
6 *Assault Weapons Ban* at 46-52; *see also America's Experience with the Federal*  
7 *Assault Weapons Ban* at 163-64.

8 Thus, while developing a national estimate of the number of assault weapons  
9 crimes prevented by the federal ban is complicated by the range of estimates of  
10 assault weapon use and changes therein derived from different data sources,  
11 tentatively, it appears that the federal ban prevented a few thousand crimes with  
12 assault weapons annually. For example, using 2% as the best estimate of the share  
13 of gun crimes involving assault weapons prior to the ban, and 40% as a reasonable  
14 estimate of the post-ban drop in this figure, implies that almost 2,900 murders,  
15 robberies, and assaults with assault weapons were prevented in 2002. *See Updated*  
16 *Assessment of the Federal Assault Weapons Ban* at 52 n.61.<sup>21</sup> If this tentative  
17 conclusion is correct, then contrary to Plaintiffs' contention, prohibitions like the  
18 federal ban do have an impact on criminal users of guns.

## 19 2. Large-Capacity Magazines

20 Assessing trends in LCM use is much more difficult because there was, and is,  
21 no national data source on crimes with LCMs, and few local jurisdictions maintain  
22 this sort of information.

23 It was possible, nonetheless, to examine trends in the use of guns with LCMs  
24 in four jurisdictions: Baltimore, Milwaukee, Anchorage, and Louisville. In all four  
25

26 <sup>21</sup> While it seems likely that some or all of these crimes happened regardless, as  
27 perpetrators merely substituted some other gun for the assault weapon, it also seems  
28 likely that the number of victims per shooting incident, and the number of wounds  
inflicted per victim, was diminished in some of those instances.

jurisdictions, the overall share of crime guns equipped with LCMs rose or remained steady through at least the late 1990s. This failure to reduce overall LCM use for at least several years after the federal ban was likely due to the immense stock of exempted pre-ban magazines, which, as noted, was enhanced by post-ban imports. *See Updated Assessment of the Federal Assault Weapons Ban* at 68-79; *see also America's Experience with the Federal Assault Weapons Ban* at 164.

My studies did show that crimes with LCMs may have been decreasing by the early 2000s, but the available data in the four cities I investigated were too limited and inconsistent to draw any clear overall conclusions in this regard. *See America's Experience with the Federal Assault Weapons Ban* at 164; *Updated Assessment of the Federal Assault Weapons Ban* at 68-79.

However, a later investigation by *The Washington Post* of LCM use in Virginia, analyzing data maintained by the Virginia State Police as to guns recovered in crimes by local law enforcement officers across the state, suggests that the ban may have had a more substantial impact on the supply of LCMs to criminal users by the time it expired in 2004. In Virginia, the share of recovered guns with LCMs generally varied between 13% and 16% from 1994 through 2000 but fell to 9% by 2004. Following expiration of the federal ban in 2004, the share of Virginia crime guns with an LCM rose to 20% by 2010. *See America's Experience with the Federal Assault Weapons Ban* at 165.<sup>22</sup> These data suggest that the federal ban

<sup>22</sup> The results of *The Washington Post's* original investigation (which are what are conveyed in *America's Experience with the Federal Assault Weapons Ban* at 165) are reported in David S. Fallis & James V. Grimaldi, *Va. Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan. 23, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html>, and attached as Exhibit E to this report. In early 2013, *The Washington Post* updated this analysis, and slightly revised the figures it reported by identifying and excluding from its counts more than 1,000 .22-caliber rifles with large-capacity tubular magazines, which were not subject to the federal ban (and which are similarly not subject to California's ban on large-capacity magazines). *See* David S. Fallis, *Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban*, Wash. Post, Jan. 10, 2013, available at <https://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-> (continued...)

1 may have been reducing the use of LCMs in gun crime by the time it expired in  
2 2004, and that it could have had a stronger impact had it remained in effect.

### 3 3. Summary of Results of the Federal Assault Weapons Ban

4 The federal ban's exemption of millions of pre-ban assault weapons and  
5 LCMs meant that the effects of the law would occur only gradually—and that those  
6 effects were still unfolding when the ban expired in 2004. Nevertheless, while the  
7 ban did not appear to have a measurable effect on overall gun crime during the  
8 limited time it was in effect, as just discussed, my studies and others do appear to  
9 show a significant impact on the number of gun crimes involving assault weapons  
10 and a possibly significant impact (based on *The Washington Post's* analysis of  
11 Virginia data, see Fallis, *supra*, at Exhibits E & F) on those crimes involving  
12 LCMs.<sup>23</sup>

13 Moreover, as set forth in my 2013 book chapter, there is evidence that, had the  
14 federal ban remained in effect longer (or were it renewed), it could conceivably  
15 have yielded significant additional societal benefits as well, potentially preventing  
16 hundreds of gunshot victimizations annually and producing millions of dollars of

17 (...continued)

18 a6a6-aabac85e8036\_story.html?utm\_term=.44aa13f8e442, and attached as Exhibit  
19 F to this report. This updated data is reported above.

20 <sup>23</sup> In our initial 1997 study on the impact of the federal assault weapons ban, Jeffrey  
21 Roth and I also estimated that gun murders were about 7% lower than expected in  
22 1995 (the first year after the ban), adjusting for pre-existing trends. *See Impact*  
23 *Evaluation* at 6, 79-85. However, the very limited post-ban data available for that  
24 study precluded a definitive judgment as to whether this drop was statistically  
25 meaningful. My later findings on LCM use made it difficult to credit the ban with  
26 this effect, however, and I did not update it for the 2004 report. *See Updated*  
27 *Assessment of the Federal Assault Weapons Ban* at 92 n.109. Other national  
28 studies of trends in gun violence have failed to find an effect of the federal ban on  
gun murders (which is consistent with my conclusions in the 2004 report but must  
also be interpreted in light of the ban's limitations and delayed effects as discussed  
above), though they also suggest that the ban may have reduced fatalities and  
injuries from public mass shootings. Mark Gius, *An Examination of the Effects of*  
*Concealed Weapons Laws and Assault Weapons Bans on State-Level Murder*  
*Rates*, 21 *Applied Econ. Letters* 265, 265-267 (Nov. 26, 2013) (hereinafter, "Gius  
2013"); Mark Gius, *The Impact of State and Federal Assault Weapons Bans on*  
*Public Mass Shootings*, 22 *Applied Econ. Letters* 281, 281-84 (Aug. 1, 2014)  
(hereinafter, "Gius 2014").

1 cost savings per year in medical care alone. Indeed, reducing shootings by even a  
2 very small margin could produce substantial long term savings for society,  
3 especially as the shootings prevented accrue over many years. *See America's*  
4 *Experience with the Federal Assault Weapons Ban* at 166-67; *see also Updated*  
5 *Assessment of the Federal Assault Weapons Ban* at 100 n.118. Some studies have  
6 shown that the lifetime medical costs for gunshot injuries are about \$28,894  
7 (adjusted for inflation). Thus, even a 1% reduction in gunshot victimizations at the  
8 national level would result in roughly \$18,781,100 in lifetime medical costs savings  
9 from the shootings prevented each year. *See America's Experience with the*  
10 *Federal Assault Weapons Ban* at 166-67; *see also Updated Assessment of the*  
11 *Federal Assault Weapons Ban* at 100 n.18.

12 The cost savings potentially could be substantially higher if one looks beyond  
13 just medical costs. For example, some estimates suggest that the full societal costs  
14 of gun violence—including medical, criminal justice, and other government and  
15 private costs (both tangible and intangible)—could be as high as \$1 million per  
16 shooting. Based on those estimates, even a 1% decrease in shootings nationally  
17 could result in roughly \$650 million in cost savings to society from shootings  
18 prevented each year. *See America's Experience with the Federal Assault Weapons*  
19 *Ban* at 166-67.

20 **E. More Recent Research on Criminal Use of Large Capacity**  
21 **Magazines**

22 To provide an updated examination of the assault weapons and LCM issue,  
23 my colleagues and I recently investigated current levels of criminal activity with  
24 assault weapons and other high capacity semiautomatic firearms in the United  
25 States using several local and national data sources.<sup>24</sup> I focus here on the results  
26 pertaining to the use of guns with LCMs overall. Sources for this portion of the

27 <sup>24</sup> See Koper et al., *supra* note 5.  
28



1 analysis included guns recovered by police in eight large cities (Hartford, CT;  
2 Syracuse, NY; Baltimore, MD; Richmond, VA; Minneapolis, MN; Milwaukee, WI;  
3 Kansas City, MO; and Seattle, WA), guns used in murders of police throughout the  
4 nation, and guns used in firearm mass murder incidents in which at least four  
5 people were murdered with a firearm (irrespective of the number of additional  
6 victims shot but not killed). The use of guns with LCMs was measured precisely  
7 for the Syracuse, Baltimore, and Richmond analyses, which were based on data  
8 sources having an indicator for magazine capacity, and some of the mass murder  
9 incidents. For other analyses, use of guns with LCMs was approximated based on  
10 recoveries of semiautomatic firearm models that are commonly manufactured and  
11 sold with LCMs. I refer to these guns collectively as LCM firearms.

12 In short, the findings of this study reinforce many of the points made above  
13 based on my earlier research. In the police databases, which covered varying time  
14 periods from 2008 through 2014, LCM firearms generally accounted for 22-36% of  
15 crime guns, with some estimates upwards of 40% for cases involving shootings.<sup>25</sup>  
16 Although these estimates may overstate LCM use somewhat (since some estimates  
17 were based on measurement of LCM compatible firearms that may not all have  
18 been equipped with LCMs), they suggest that LCMs are used in a substantial share  
19 of gun crimes. Consistent with prior research, we also found that LCM firearms are  
20 more heavily represented among guns used in murders of police and mass murders.  
21 For the period of 2009 through 2013, LCM firearms constituted 41% of guns used  
22 in murders of police, with annual estimates ranging from 35% to 48%. Further, our  
23 analysis of a sample of 145 mass murders that occurred from 2009 through 2015  
24 suggested that LCM firearms were involved in as many as 57% of these incidents

25 <sup>25</sup> An exception is that crime guns were least likely to be equipped with LCMs in  
26 Syracuse (14.6%). This may be attributable to New York State LCM restrictions  
27 that have been in effect since the early 2000s, but our study did not address this  
28 question.



1 based on cases for which a definitive determination could be made (as a caveat,  
2 precise data on the guns and magazines used were not available for most cases).  
3 The identified LCM cases typically occurred in public locations (80%) and resulted  
4 in more than twice as many people shot on average as did other incidents—a  
5 statistically significant difference that is not likely due to chance (13.7 victims on  
6 average for LCM cases versus 5.2 for other cases).

7 Our study also revealed that LCM firearms have grown substantially as a share  
8 of guns used in crime since the expiration of the federal LCM ban. This conclusion  
9 is based on guns used in murders of police nationally (2003-2013) as well as guns  
10 recovered by police in Baltimore (2004-2014), Richmond (2003-2009), and  
11 Minneapolis (2006-2014).<sup>26</sup> For these data sources and time frames, the percentage  
12 of guns that were LCM firearms increased (in relative terms) by 33-49% in the  
13 Baltimore, Minneapolis, and national data, and by 112% in the Richmond data.<sup>27</sup>

14 This upward trend in criminal use of LCM firearms implies possible increases  
15 in the level of gunfire and injury per gun attack since the expiration of the federal  
16 LCM ban. Consistent with this inference, national data that we compiled from the  
17 federal Centers for Disease Control and Prevention and the Federal Bureau of  
18 Investigation show that gun homicides and assault-related non-fatal shootings rose  
19 by about 29% relative to the level of overall reported violent gun crimes  
20 (homicides, assaults, and robberies) between 2003-2005 and 2010-2012.<sup>28</sup>

21  
22 <sup>26</sup> Note that Maryland restricted LCMs with more than 20 rounds throughout this  
period and extended these restrictions to LCMs with more than 10 rounds in 2013.

23 <sup>27</sup> For example, the share of guns used in police murders that were LCM firearms  
24 rose from 30.4% for the 2003-2007 period to 40.6% for the 2009-2013 period (a  
relative increase of 33.6%). In the Richmond data, LCM firearms increased from  
25 10.4% of guns recovered by police for the 2003-2004 period to 22% for the 2008-  
2009 period (a relative increase of 111.5%).

26 <sup>28</sup> See Koper et al., *supra* note 5. This trend was driven by assault-weapon-related  
27 non-fatal shootings, which have been trending upward since the early 2000s and  
recently reached their highest rates since 1995. See Katherine A. Fowler et al.,  
28 *Firearm Injuries in the United States*, 79 Preventive Med. 5, 5-14 (Oct. 2015).

1 Although the correlation of these trends does not prove causation, they suggest the  
2 possibility that greater use of LCM firearms has contributed to higher levels of  
3 shootings in recent years.

4 **VI. SECTION 32310 -- CALIFORNIA'S LARGE-CAPACITY MAGAZINE**  
5 **PROHIBITION**

6 **A. The LCM Ban**

7 On July 1, 2016, the State of California enacted Senate Bill No. 1446 (2015-  
8 2016 Reg. Sess.), which prohibited the possession of LCMs (defined under Section  
9 16740 as “a feeding device with the capacity to accept more than 10 rounds”) beginning on July 1, 2017. Cal. Stats. 2016, ch. 58 (SB 1446) § 1. SB 1446, which  
10 went into effect on January 1, 2017, amended Section 32310 to state that, beginning  
11 on July 1, 2017, any person possessing an LCM, with exemptions not relevant here,  
12 would be guilty of an infraction punishable by a fine starting at \$100 for the first  
13 offense. Cal. Stats. 2016, ch. 58 (S.B. 1446) § 1 (amending Section 32310 to add a  
14 new subdivision (c)). The law also provided that anyone possessing an LCM may,  
15 prior to July 1, 2017, dispose of the magazine by any of the following means: (1)  
16 removing it from the state; (1) selling it to a licensed firearms dealer; (3) destroying  
17 it; or (4) surrendering it to a law enforcement agency for destruction. Cal. Stats.  
18 2016, ch. 58 (S.B. 1446) § 1 (amending Section 32310 to add a new subdivision  
19 (d)). The Senate Bill Analysis noted that the amendments were necessary because  
20 the prior version of the law, which did not prohibition possession of LCMs, was  
21 “very difficult to enforce.” Sen. Bill No. 1446, 3d reading Mar. 28, 2016 (2015-  
22 2016 Reg. Sess.) (Cal. 2016)).

23  
24 On November 8, 2016, California voters passed Proposition 63, the “Safety for  
25 All Act of 2016.” Prop. 63, § 1, as approved by voters (Gen. Elec. Nov. 8, 2016)).  
26 The measure included several provisions—including amendments to Section  
27 32310—intended to close “loopholes that leave communities throughout the state  
28 vulnerable to gun violence and mass shootings.” Prop. 63, § 2, ¶ 5. The

1 amendments to Section 32310 largely mirror the same amendments made under  
 2 SB 1446. Both provisions prohibit the possession of LCMs on or after July 1,  
 3 2017, and list options for the disposal of LCMs before that date. Prop. 63 also  
 4 increased the potential consequence for violations of the possession ban, from an  
 5 infraction to an infraction or a misdemeanor. Prop. 63, § 6.1. References to  
 6 Section 32310 in this brief are to the statute as amended by Proposition 63.

7 **B. The Potential Impact and Efficacy of California's Ban on**  
 8 **Possession of LCMs**

9 California's ban on possession was only recently passed, and I have not  
 10 undertaken any study or analysis of this law. Nevertheless, it is my considered  
 11 opinion that, based on the similarities of Section 32310 to the federal ban, the  
 12 impacts of the federal ban and the ways in which Section 32310 address some of  
 13 the weaknesses of the federal ban, Section 32310 is likely to advance California's  
 14 interest in protecting public safety.<sup>29</sup>

15  
 16 <sup>29</sup> A few studies of state-level assault weapon and LCM bans have examined the  
 17 effects of these laws on gun violence and other crimes. In those studies that have  
 18 examined gun homicides and other shootings (the crimes that are logically most  
 19 likely to be affected by LCM bans), evidence has been mixed. Although states with  
 20 assault weapon and LCM laws tend to have lower gun murder rates, this association  
 21 is not statistically significant when controlling for other social and policy factors.  
 22 However, other evidence from these studies suggests these laws may produce  
 23 statistically significant reductions in fatalities from public mass shootings. See  
 24 Gius 2013 at 265-67; see also Gius 2014 at 281-84; Eric W. Fleegler et al., *Firearm*  
 25 *legislation and firearm-related fatalities in the United States*, 173 JAMA Internal  
 26 Med. 732, 732-40 (2013); Christopher S. Koper & Jeffrey A. Roth, *The Impact of*  
 27 *the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: an Assessment*  
 28 *of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 Journal  
 of Quantitative Criminology 33-74 (2001); see also *Updated Assessment of the*  
*Federal Assault Weapons Ban* at 81 n.95. Nonetheless, it is difficult to draw  
 definitive conclusions from these studies for several reasons including the  
 following. For one, there is little evidence on how state LCM bans affect the  
 availability and use of LCMs over time. Further, studies have not generally  
 accounted for important differences in state assault weapons laws—most notably,  
 whether they include LCM bans—and changes in these provisions over time.  
 Perhaps most importantly, to the best of my knowledge, there have not been any  
 studies examining the effects of LCM laws that ban LCMs without grandfathering,  
 as done by the new California statute. Hence, these studies have limited value in  
 assessing the potential effectiveness of California's new law.


1 California's LCM ban is more robust than the expired federal ban, and may be  
2 more effective more quickly due to its elimination of grandfathering for previously  
3 owned LCMs. While the LCM ban was arguably the most important feature of the  
4 1994 federal ban (given that LCMs are the key feature contributing to an assault  
5 weapon's firepower, and that the reach of the LCM ban was much greater than the  
6 assault weapons ban as many semiautomatic guns that were not banned could still  
7 accept LCMs), my studies as to the effects of the federal ban indicated that the  
8 LCM ban was likely not as efficacious in reducing the use of these magazines in  
9 crime as it otherwise might have been because of the large number of pre-ban  
10 LCMs which were exempted from the ban. *The Washington Post's* investigation of  
11 recovered guns with LCMs in Virginia, which showed an increasing decline in the  
12 number of recovered guns with LCMs the longer the ban was in effect, similarly  
13 suggests that the grandfathering of pre-ban LCMs delayed the full impact of the  
14 federal ban. See Fallis, *supra*, attached as Exhs. E & F. In my opinion, eliminating  
15 the grandfathering of pre-ban LCMs, as done by California's new law, would have  
16 improved the efficacy of the federal ban.

17 In my opinion, based on the data and information contained in this report and  
18 the sources referred to herein, a complete ban on the possession of LCMs has the  
19 potential to: (1) reduce the number of crimes committed with LCMs; (2) reduce the  
20 number of shots fired in gun crimes; (3) reduce the number of gunshot victims in  
21 such crimes; (4) reduce the number of wounds per gunshot victim; (5) reduce the  
22 lethality of gunshot injuries when they do occur; and (6) reduce the substantial  
23 societal costs that flow from shootings.

24 Through Section 32310 (c) and (d), California has enacted a ban on the  
25 possession of LCMs. Like federal restrictions on fully automatic weapons and  
26 armor piercing ammunition, I believe this measure has the potential to help prevent  
27 the use and spread of particularly dangerous weaponry, and is a reasonable and  
28

1 well-constructed measure that is likely to advance California's interest in protecting  
2 its citizens and its police force.

3 Respectfully Submitted,

4   
5

6 Dr. Christopher S. Koper  
7 October 5, 2017  
8 Ashburn, Virginia  
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## **EXHIBIT 4**



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

JUL 06 1989

MEMORANDUM TO: Director

FROM: Associate Director (Compliance Operations)

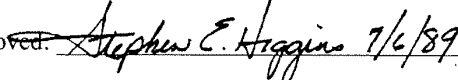
SUBJECT: Report and Recommendation on the  
Importability of Certain Semiautomatic Rifles

The working group has completed its evaluation of the semiautomatic rifles whose importation was suspended pending a determination as to whether these weapons are, as required by 18 U.S.C. § 925(d)(3), of a type "generally recognized as particularly suitable for or readily adaptable to sporting purposes".

Attached for your review and approval is the report and recommendation on the importability of these rifles.

  
Daniel Black

Attachment

Approved:  7/6/89

Disapprove: \_\_\_\_\_



**REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP  
ON THE IMPORTABILITY OF CERTAIN  
SEMIAUTOMATIC RIFLES**

**SUSPENSION OF ASSAULT-TYPE RIFLE IMPORTATIONS**

On March 14, 1989, ATF announced that it was suspending, effective immediately, the importation of several makes of assault-type rifles, pending a decision as to whether these weapons meet the statutory test that they are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The announcement stated that ATF would not approve, until further notice, the importation of AKS-type weapons, Uzi carbines, FN/FAL-type weapons, FN/FNC-type weapons and Steyr Aug semiautomatic weapons. On April 5, 1989, the suspension was expanded to include all similar assault-type rifles.

For purposes of this suspension, assault-type rifles were rifles which generally met the following criteria:

- a. military appearance
- b. large magazine capacity
- c. semiautomatic version of a machinegun

Based on these criteria, ATF suspended action on pending applications and suspended outstanding permits covering certain firearms listed in Attachment 1. These included both centerfire and .22 rimfire caliber firearms. At that time, ATF indicated that the reexamination of these weapons would take approximately 90 days.

This ATF working group was established to conduct the reevaluation of the importability of these semiautomatic rifles. This report represents the findings and recommendations of the working group.

**BACKGROUND**

Section 925(d)(3) of Title 18, United States Code, as amended, provides in pertinent part that:

The Secretary shall authorize a firearm. . .to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily

adaptable to sporting purposes, excluding surplus  
military firearms. . .

This provision was originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and was also contained in Title I of the Gun Control Act of 1968, which amended Title IV later that year. According to the Senate Report on Title IV, this provision was intended to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.

Moreover, there is legislative history which indicates that Congress intended the standard to allow the importation of traditional sporting rifles, while excluding military-type rifles. The Senate Report on the Gun Control Act observed that the importation standards “. . . are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms.” S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968). Significantly, the rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.<sup>1</sup>

An explanation of the effect of this section by one of the sponsors of the bill specifically stated that military firearms would not meet the “sporting purposes” test for importation. The mere fact that a military firearm may be used in a sporting event does not make it importable as a sporting firearm<sup>2</sup>.

There is a reference in the Senate Report on Title IV which notes that the importation prohibition “. . . would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes, or for personal protection.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167. However, this language is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting since firearms particularly suitable for those purposes can obviously be used for other purposes such as recreational shooting and personal protection.

The determination of a weapon’s suitability for sporting purposes “rest[s] directly with the Secretary of the Treasury.” 114 Cong. Rec. 27465 (1968) (Statement of Sen. Murphy). While the legislative history suggests that the term “sporting purposes” refers to the traditional sports of target shooting, trap and skeet shooting, and hunting, the statute itself provides no criteria beyond the “generally recognized” language of section 925(d)(3). S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2167. The Senate Report on the Gun Control Act stated:

The difficulty of defining weapons characteristics to meet this target [of eliminating importation of weapons used in crime] without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

Following enactment of the Gun Control Act in 1968, the Secretary established a Firearms Evaluation Panel to provide guidelines for implementation of the “sporting purposes” test of section 925(d)(3). This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. An evaluation sheet (ATF Form 4590) was developed thereafter by ATF and put into use for evaluating handguns pursuant to section 925(d)(3). Attachment 2.

The 1968 Firearms Evaluation Panel did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms which Congress addressed separately, long guns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns. Until recently, all rifles and shotguns were approved for importation so long as they were not otherwise excluded by section 925(d)(3). Only rifles and shotguns covered by the National Firearms Act (NFA), 26 U.S.C. S 5845(a) (for example, machineguns and short-barreled rifles and short-barreled shotguns), and surplus military rifles and shotguns had been denied importation.

The Firearms Evaluation Panel did briefly comment on whether a model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was suitable for sporting purposes. Minutes of the Firearms Advisory Panel, December 10, 1968. Attachment 3. It was the consensus of the Panel that this rifle did have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of the Beretta BM59, together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle, be authorized for importation. (The Beretta BM59 and the Cetme, the predecessor to the HK91, are two of the rifles whose importation has been suspended. The SIG-AMT is no longer being produced.) However, the Panel recommended that importation of these weapons should include the restriction that they not possess combination flash suppressors/grenade launchers.

The working group found the Panel’s consideration of these rifles to be superficial and unpersuasive. The vast majority of the work of the 1968 Panel was devoted to handguns and the establishment of the factoring criteria for the importation of handguns. Indeed, we found compelling evidence that these rifles are not generally recognized as particularly suitable for sporting purposes.

The first time that ATF looked beyond the restrictions on NFA and surplus military rifles and shotguns and undertook a meaningful analysis under the “sporting purposes” test was in 1984. At that time, ATF was faced with a new breed of imported shotgun. It was clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was suitable for police/combat style competitions. ATF determined that this type of competition did not constitute “sporting purposes” under the statute, and that this shotgun was not suitable for traditional sporting purposes, such as hunting, and trap and skeet shooting. Accordingly, importation was denied. Attachment 4.

Thereafter, in 1986, the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). After examination and testing of the weapon, ATF found that it was a semiautomatic version of a selective fire military-type assault shotgun. In this case, ATF determined that, due to its weight, size, bulk, designed magazine capacity, configuration, and other factors, the USAS-12 was not particularly suitable for or readily adaptable to sporting purposes. Again, ATF refused to recognize police/combat competitions as a sporting purpose under section 925(d)(3). The shotgun was reviewed on the basis of its suitability for traditional shotgun sports of hunting, and trap and skeet shooting and its importation was denied. Attachment 5. This decision was upheld by the United States District Court in Gilbert Equipment Company, Inc. v. Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989). The case is currently on appeal to the Eleventh Circuit.

These two cases involving shotguns represent ATF's first thorough examination of the suitability of certain combat-type weapons for sporting purposes. In these cases ATF adopted an interpretation of sporting as being limited to certain traditional sports and not simply any lawful activity in which the weapons might be employed.

### ANALYSIS

#### A. Defining the type of weapon under review.

As noted above, section 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, in its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated:

This subsection gives the Secretary authority to permit the importation of ammunition and certain types of firearms--(1) those imported for scientific or research purposes or for use in competition or training under chapter 401 of title 10 of the United States Code; (2) an unserviceable firearm other than a machinegun; (3) those firearms not coming within the purview of the National Firearms Act (26 U.S.C. 5801, et seq.) and suitable for sporting purposes (in the case of surplus military weapons this type is limited to shotguns and rifles) and those taken out of the United States. (Emphasis added.)

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

In light of the statutory mandate that types of firearms be scrutinized, the working group first attempted to determine whether the semiautomatic rifles suspended from importation fall within a type of firearm.

The working group determined that the semiautomatic rifles in question are generally semiautomatic versions of true selective fire military assault rifles.<sup>3</sup> As a class or type of firearm they are often referred to as "assault rifles," "assault-type rifles," "military style rifles," or "paramilitary rifles."<sup>4</sup> Since we are only concerned with semiautomatic rifles, it is somewhat of a misnomer to refer to these weapons as "assault rifles." True assault rifles are selective fire

weapons that will fire in a fully automatic mode.<sup>5</sup> For the purposes of this paper, it was necessary to settle on one term that best describes the weapons under consideration, and we will refer to these weapons as “semiautomatic assault rifles.” They represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle. The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK47, is a weapon designed for killing or disabling the enemy and, as described below, has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles.<sup>6</sup> These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle. These features and characteristics are as follows:

#### 1. Military Configuration.

- a. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines.<sup>7</sup> This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. In addition, some States have a limit on the magazine capacity allowed for hunting, usually 8 rounds or less.<sup>8</sup> That a firearm is designed and sold with a large capacity magazine, e.g., 20-30 rounds, is a factor to be considered in determining whether a firearm is a semiautomatic assault rifle.
- b. Folding/telescoping stocks. Many military firearms incorporate folding or telescoping stocks.<sup>9</sup> The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
- c. Pistol grips. The vast majority of military firearms employ a well-defined pistol grip that protrudes conspicuously beneath the action of the weapon.<sup>10</sup> In most cases, the “straight line design” of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions.
- d. Ability to accept a bayonet. A bayonet has distinct military purposes.<sup>11</sup> First, it has a psychological affect on the enemy. Second, it enables soldiers to fight in close quarters



with a knife attached to their rifles. We know of no traditional sporting application for a bayonet.

- e. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired fully automatic.<sup>12</sup> From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Those flash suppressors which also serve to dampen "muzzle climb" have a limited benefit in sporting uses by allowing the shooter to reacquire the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.
- f. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached.<sup>13</sup> The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired fully automatic. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "sling swivel mount" or simply clamp onto the firearm.
- g. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades.<sup>14</sup> Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle either by screws or clamps. We are not aware of any particular sporting use for grenade launchers.
- h. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness.<sup>15</sup> Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally illegal to hunt at night.

2. Whether the weapon is a semiautomatic version of a machinegun.

The vast majority of modern military firearms are selective fire, *i.e.*, they can shoot either fully automatic or semiautomatic. Since machineguns are prohibited from importation (except for law enforcement use) the manufacturers of such weapons have developed semiautomatic versions of these firearms.<sup>16</sup>

3. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

Modern military assault rifles and submachineguns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less.<sup>17</sup> On the other hand, while many traditional sporting rifles will fire a cartridge of 2.25 inches or less, such firearms usually do not have the other military features outlined in Items 1a-h.

These features and characteristics are not usually found on traditional sporting firearms.<sup>18</sup> This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. Indeed, many traditional sporting firearms are semiautomatic or have detachable magazines. Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.

Using these criteria, we determined that, on balance, all of the firearms on the original suspension list are properly included in the semiautomatic assault rifle category, with the exception of the .22 rimfire caliber rifles and the Valmet Hunter. While the .22 rimfire caliber rifles bear a striking resemblance to the true assault rifle, these rifles employ, by and large, conventional .22 rimfire caliber semiautomatic mechanisms.<sup>19</sup> Moreover, they are not semiautomatic versions of a machinegun and contain only a few of the other relevant characteristics. Further, the working group determined that, in general, .22 caliber rifles are generally recognized as suitable for small game hunting. The Valmet Hunter, while based on the operating mechanism of the AK47 assault rifle, has been substantially changed so that it is now akin to a traditional sporting rifle and does not properly fall within the semiautomatic assault rifle category. More specifically, its receiver has been modified and its pistol grips, bayonet, and flash suppressor have been removed. The trigger mechanism has been moved to the rear of the modified receiver to facilitate its use with a traditional sporting stock. Also, its military-style sights have been replaced with traditional sporting-style sights. See Attachment 6.

#### B. Scope of “Sporting Purposes”.

The second step of our process was to determine the scope of “sporting purposes” as used in the statute. This is a critical aspect of the process. The broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the “sporting purposes” test. A narrower interpretation which focuses on the traditional sports of hunting and organized marksmanship competition would result in a more selective importation process.<sup>20</sup>

To determine the proper interpretation, we consulted the statute itself, its legislative history, applicable case law, the work of the original Firearms Evaluation Panel, and prior interpretations by ATF. In terms of the statute itself, the structure of the importation provisions would suggest a somewhat narrow interpretation. In this regard, firearms are prohibited from importation (section 922(1)) with certain specific exceptions (section 925(d)(3)). A broad interpretation which permits virtually any firearm to be imported because someone may wish to use it in some lawful shooting activity would render the statute meaningless.

As discussed earlier, the legislative history suggests a narrow meaning and indicates that the term “sporting purposes” refers to the traditional sports of target shooting, skeet and trap shooting, and hunting. Moreover, the history discussed earlier strongly suggests that Congress intended the provision to allow the importation of traditional sporting type rifles while excluding military type rifles. There is nothing in its history to indicate that it was intended to recognize every conceivable



type of activity or competition which might employ a firearm. To the contrary, the history indicates that mere use in some competition would not make the rifle a sporting rifle.

Finally, the 1968 Firearms Evaluation Panel specifically addressed at least one informal shooting activity and determined that it was not a legitimate sporting purpose under the statute. The panel addressed what is commonly referred to as “plinking” (shooting at randomly selected targets such as bottles and cans). It was the Panel’s view that “while many persons participated in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . .” See Attachment 3.

Based on the above, the working group determined that the term “sporting purpose” should properly be given a narrow reading. It was determined that while hunting has been a recognized rifle sport for centuries, and competitive target shooting is a recognized rifle sport, the so-called activity of plinking is not a recognized sport. Moreover, we believe that reference to sporting purposes was intended also to stand in contrast to military and law enforcement applications. Consequently, the working group does not

believe that police/combat-type competitions should be treated as sporting activities. This position is supported by the court’s decision in Gilbert Equipment Company, Inc., v Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989) and is consistent with prior interpretations of ATF as noted on pages 4 and 5 in discussing the Striker-12 shotgun and USAS-12 shotgun.

#### C. Suitability.

The final step in our review involved an evaluation of whether semiautomatic assault rifles are a type of rifle generally recognized as particularly suitable for or readily adaptable to the traditional sporting applications discussed above.

The criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their importation. Nevertheless, the working group did not consider criminal misuse as a factor in its analysis of the importability of this type of rifle. Instead, the working group confined its analysis to the question of whether this type of rifle meets the test provided in section 925(d)(3).

Rather than criminal misuse, our comprehensive examination of this issue focused on the legal analysis and technical assessment of these firearms discussed earlier. In addition, the working group used the information gathered under Items 1-7 outlined in the next section in determining whether this type of firearm is generally recognized as particularly suitable for sporting purposes. These items take into account technical and marketing data, expert opinions, the recommended uses of the firearms, and data on the actual uses for which the weapons are employed in this country.

In evaluating these firearms, we believe that all rifles which are fairly typed as semiautomatic assault rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability.<sup>21</sup> Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type.

This is consistent with the approach taken with respect to handguns since 1968. Although certain handguns may be used or recommended for sporting purposes, they may fall within the type of easily concealable handguns barred from importation by the administrative factoring criteria used by ATF to determine the importability of handguns. Furthermore, a pistol specifically designed for target shooting, but lacking a safety as required by the factoring criteria, would be a type of handgun prohibited from importation as not particularly suitable for sporting purposes for this reason. Finally, just as ATF allows handguns to be modified so as to meet the factoring criteria, a semiautomatic assault rifle could be modified into a sporting configuration and be importable, as was done in the case of the Valmet Hunter referred to earlier.

D. Evaluation of Information from Outside Sources

As part of our comprehensive analysis as to whether semiautomatic assault rifles meet the statutory criteria for importation, the following sources of information were also considered:

1. How has the weapon been advertised, marketed and categorized by the manufacturer and/or importer?
2. How has the use of the rifle been described by firearms technical writers?
3. What is the rifle's reported use by importers?
4. Do hunting guides recommend the rifle?
5. Do editors of hunting magazines recommend the rifle?
6. Is the rifle used in target shooting competitions?
7. Do State game commissions allow the use of the rifle to hunt?

Items 1-6 focus upon how the rifles are marketed, advertised, and recommended for use. Item 7 addresses the legal restrictions pertaining to the use of the weapons for sporting purposes.

The working group reviewed the advertising and marketing literature concerning each of the weapons (Item 1) and reviewed evaluations of the firearms by technical writers (Item 2). In addition, the working group solicited information from the importers of the weapons and other knowledgeable sources (Items 3-6).

Questionnaires were drafted and sent out to licensed hunting guides, State game and fish commissions, local hunting associations, competitive shooting groups, and hunting/shooting magazine editors to determine the extent to which the weapons are used for sporting purposes or recommended for such use. The working group believed that the actual uses of the weapons for sporting purposes would be a factor to be considered in determining whether this type of rifle meets the sporting purposes test.

The review of advertising and marketing literature indicates that these rifles are not generally marketed for hunting or competitive shooting. The review of the technical evaluations revealed that these rifles are not regarded as suitable for these sporting activities.<sup>22</sup>

To the extent that the technical evaluations made recommendations with respect to the use of the rifles suspended from importation, the majority recommended them for law enforcement or military use or for activities such as collecting, plinking, home and self-defense, and combat target shooting. Only 5 of over 50 evaluations reviewed contained recommendations for the use of these firearms for hunting purposes.

The importers were asked to submit information concerning the sporting uses of the semiautomatic rifles they import. Thirty-nine importers were asked to submit this information and 19 responded. In general, their comments were conclusory and stated that their weapons could be used for sporting purposes. A small number of importers, e.g., Gun South, Inc., and Heckler & Koch, Inc., provided more specific data showing the sporting uses made of their firearms by their customers.

Of 3 hunting associations to whom questionnaires were sent, 2 responded. They stated that they place no restrictions on the use of semiautomatic rifles by their members, on the minimum caliber of ammunition used to hunt large game, or on the number of rounds allowed in semiautomatic rifle magazines. However, over 1,800 hunting guides were sent questionnaires and, of these, 706 responded. Over 73 percent of those responding indicated that their patrons used either bolt or lever action rifles for hunting. Only 10 of the 706 guides indicated that their patrons had used any of the rifles whose importation had been temporarily suspended.

Of the 20 hunting/shooting editors to whom questionnaires were sent, 14 responded. Nine of the fourteen editors recommended semiautomatic rifles for use in hunting large game, including 5 who recommended use of any of the rifles subject to the temporary suspension. Eleven of the fourteen editors recommended semiautomatic rifles for target competitions, including 7 who recommended semiautomatic assault rifles for such use.

The recommendations of editors were contradictory. One editor pointed out that what made the assault rifle successful as a military weapon made the semiautomatic version totally unfit for any other use. On the other hand, another editor stated that semiautomatic rifles had certain advantages over conventional sporting rifles especially for the physically disabled and left-handed shooters. While this may be true, there appears to be no advantage to using a semiautomatic assault rifle as opposed to a semiautomatic sporting rifle.

A total of 54 competitive shooting groups were sent a questionnaire and 53 groups responded (some of the responses were from unsolicited groups). Fifty of these groups indicated that they sponsor high power rifle competition events. While none of the groups prohibited the use of the semiautomatic assault rifles in their competitions, none stated that any of the rifles covered by the temporary suspension were used in a specific event.

Finally, the information gathered under Item 7 reveals that most of these weapons could legally be used in most States for most hunting purposes.

The working group reviewed all of the information gathered under Items 1-6 and determined that while these weapons may legally be used for sporting purposes in most States, the evidence was compelling that, as a type of firearm, the semiautomatic assault rifle is not generally recognized as particularly suitable for sporting purposes. The working group found persuasive the technical and expert evaluations of these firearms which generally did not recommend them as particularly suitable for sporting purposes. The group was also impressed by the comments of the hunting guides which showed that these rifles were not widely used for hunting purposes. The comments of the hunting guides are consistent with the opinion of the technical experts who generally do not recommend the rifles for hunting purposes.

The opinions of the editors were fairly divided with respect to the sporting uses of these rifles. The importers generally recommended their own weapons for such uses. The competitive shooting groups indicated that the rifles could be used in certain shooting events. Thus, while there was some evidence that these rifles could be used for hunting and target shooting, there was no evidence of any widespread use for such purposes. The mere fact that they are not generally prohibited from use for sporting purposes does not mean that the rifles meet the test for importation.

#### CONCLUSIONS

The working group has dealt with a complex issue, the resolution of which has required the group to take into account interpretations of law, technical assessments of firearms and their physical characteristics, marketing data, the assessment of data compiled from responses to questionnaires and, finally, Bureau expertise with respect to firearms. We fully recognize that particular findings as well as the results will be controversial.

From the cross section of representation within ATF, we have brought to bear our technical, legal, and administrative expertise to resolve the issues in what we believe to be a fair manner, taking into consideration all points of view. While some of the issues were difficult to resolve, in the end we believe that the ultimate conclusion is clear and compelling. These semiautomatic assault rifles were designed and intended to be particularly suitable for combat rather than sporting applications. While these weapons can be used, and indeed may be used by some, for hunting and target shooting, we believe it is clear that they are not generally recognized as particularly suitable for these purposes.

The purpose of section 925(d)(3) was to make a limited exception to the general prohibition on the importation of firearms, to preserve the sportsman's right to sporting firearms. This decision will in no way preclude the importation of true sporting firearms. It will only prevent the importation of military-style firearms which, although popular among some gun owners for collection, self-defense, combat competitions, or plinking, simply cannot be fairly characterized as sporting rifles.

Therefore, it is the finding of the working group that the semiautomatic assault rifle is not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes and that importation of these rifles should not be authorized under 18 U.S.C. § 925(d)(3).

Based on our evaluation, we recommend that the firearms listed on Attachment 7 not be authorized for importation. For the reasons discussed in this report, we recommend that the firearms listed on Attachment 8 be authorized for importation. These are the .22 rimfire caliber rifles and the Valmet Hunter which we do not believe are properly included in the category of semiautomatic assault rifles. Attachment 9 is a compilation of the responses from the questionnaires. Attachment 10 combines the criteria for identifying semiautomatic assault rifles and the items considered in assessing suitability. Attachments 11 and 12 contain the data compiled for each of the criteria listed in Attachment 10. Finally, Attachment 13 contains the source materials used in locating persons and organizations who were sent questionnaires.

#### NOTES

1. Paul Wahl, ed., Gun Trader's Guide, 13th Edition, (South Hackensack, NJ. 1987), 155-162.
2. Although a firearm might be recognized as "suitable" for use in traditional sports, it would not meet the statutory criteria unless it were recognized as particularly suitable for such use. Indeed, Senator Dodd made clear that the intent of the legislation was to " [regulate] the importation of firearms by excluding surplus military handguns; and rifles and shotguns that are not truly suitable for sporting purposes." 114 Cong. Rec. 13325 (1968) (Statement of Sen. Dodd) [emphasis added].

Similarly, it is apparent that the drafters of the legislation did not intend for "sports" to include every conceivable type of activity or competition which might employ a firearm; otherwise a "sporting purpose" could be advanced for every firearm sought to be imported. For example, in response to Sen. Hansen's question concerning the meaning of "sporting purposes" in the bill which became section 925(d), Senators Dodd and Hansen engaged in the following colloquy:

Mr. HANSEN. Would the Olympic shooting competition be a "sporting purpose?"

Mr. DODD. I would think so.

Mr. HANSEN. What about trap and skeet shooting?

Mr. DODD. I would think so. I would think trap and skeet shooting would certainly be a sporting activity.

Mr. HANSEN. Would the Camp Perry national matches be considered a "sporting purpose?"

Mr. DODD. Yes; that would not [sic] fall in that arena. It should be described as a sporting purpose.

Mr. HANSEN. I understand the only difference is in the type of firearms used at Camp Perry which includes a wide variety of military types as well as commercial.



Would all of these firearms be classified as weapons constituting a “sporting purpose?”

Mr. DODD. No. I would not say so. I think when we get into that, we definitely get into military type of weapon for use in matches like these at Camp Perry; but I do not think it is generally described as a sporting weapon. It is a military weapon. I assume they have certain types of competition in which they use these military weapons as they would in an otherwise completely sporting event. I do not think that fact would change the nature of the weapon from a military to a sporting one.

Mr. HANSEN. Is it not true that military weapons are used in Olympic competition also?

Mr. DODD. I do not know. Perhaps the Senator can tell me. I am not well informed on that.

Mr. HANSEN. It is my understanding that they are. Would the Senator be inclined to modify his response if I say that is true? (27461)

Mr. DODD. It is not that I doubt the Senator’s word. Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event. I think the Senator would agree with that. I do not know how else we could describe it.

Mr. HANSEN. If I understand the Senator correctly, he said that despite the fact that a military weapon may be used in a sporting event it did not, by that action become a sporting rifle Is that correct?

Mr. DODD. That would seem right to me ..... As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons..... I think the Senator and I know what a genuine sporting gun is.

114 Cong. Rec. 27461-62 (1968).(Emphasis added.)

3. Ken Warner, ed., Gun Digest 1989, (Northbrook, IL. 1988), pp. 293-300; William S. Jarrett, ed., Shooter’s Bible, No. 80, (Hackensack, NJ. 1988), pp. 345-363; Edward Clinton Ezell, Small Arms of the World, (Harrisburg, Pa. 1983), p. 844; Pete Dickey, “The Military Look-Alikes,” American Rifleman, (April 1980), p. 31. Also, see generally, Ian V. Hogg, ed., Jane’s Infantry Weapons, 1987-88, (New York 1987); Jack Lewis, ed., The Gun Digest Book of Assault Weapons, (Northbrook, IL. 1986).
4. Art Blatt, “Tomorrow’s State-of-the-Art Sporting Rifle,” Guns & Ammo, (July 1981), p. 48; Jarrett, pp. 345-363; Warner, pp. 293-300.
5. Daniel D. Musgrave and Thomas B.Nelson, The World’s Assault Rifles, (Virginia, 1967), p. 1.
6. See generally, Angus Laidlaw, ed., Paul Wahl’s Big Gun Catalog/1, (Bogota, NJ. 1988); Musgrave and Nelson; Hogg; Jarrett; and Warner.

7. Ibid.
8. Arizona, 5 rounds; Colorado, 6 rounds; Michigan 6 rounds; New Hampshire, 5 rounds; New York, 6 rounds; North Carolina, 6 rounds; North Dakota, 8 rounds; Oregon, 5 rounds; Pennsylvania, semiautomatic rifles prohibited; Vermont, 6 rounds.
9. See generally, Hogg; Musgrave and Nelson; Ezell; Warner; Jarrett; Laidlaw; and Lewis.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ezell, p. 844; Dickey, p. 31.
17. Musgrave and Nelson, pp. 11-29; and, see generally, Hogg; and Ezell.
18. Ezell, pp.844-866; and, see generally, Warner; Jarrett; and Laidlaw.
19. See, for example, Walter Rickell, "The Plinker's AK GunsMagazine, (July 1986) p. 21; John Lachuk, "Bantam Battle Rifles," Guns & Ammo, (January 1987), p. 37; John Lachuk, ".22 Erma Carbine," Guns & Ammo, (May 1968), p. 58; JackLewis, "Something New: The AK in Twenty-Two," Gun World, (July 1985), p. 32; Roger Combs, "A Most Unique Carbine," Gun World, (December 1985), p. 28; Garry James, "Mitchell Arms AK-22," Guns & Ammo, (November 1985), p. 72.
20. See note 2, colloquy between Senators Dodd and Hansen.
21. Ibid.
22. See generally, bibliography.



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**NOTE:** This information was extracted from the document titled, “**Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles**”, published in a memorandum to the Director, Stephen E. Higgins from the Associate Director, Daniel R. Black and approved on July 6, 1989.

## **EXHIBIT 5**

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8 *State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION

12  
13 **VIRGINIA DUNCAN, RICHARD**  
**LEWIS, PATRICK LOVETTE,**  
14 **DAVID MARGUGLIO,**  
**CHRISTOPHER WADDELL, and**  
15 **CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
16 **corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 17-cv-1017-BEN-JLB

**SUPPLEMENTAL**  
**DECLARATION OF LUCY P.**  
**ALLEN**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

**SUPPLEMENTAL DECLARATION OF LUCY ALLEN**

I, Lucy P. Allen, declare under penalty of perjury under the laws of the United States that the information in this declaration is true:

1. I previously submitted a declaration in connection to the Attorney General's Opposition to Plaintiffs' Motion for Preliminary Injunction, which was filed with this Court on June 5, 2017 (the "2017 Declaration"), and an expert report filed with this Court on April 9, 2018 (the "2018 Report").<sup>1</sup> I make this supplemental declaration providing additional data and analysis in connection to Defendants' Supplemental Brief in Response to the Court's Order of September 26, 2022.

2. I am a Managing Director of NERA Economic Consulting ("NERA"), a member of NERA's Securities and Finance Practice and Chair of NERA's Product Liability and Mass Torts Practice. NERA provides practical economic advice related to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance, and litigation. NERA was established in 1961 and now employs approximately 500 people in more than 20 offices worldwide.

3. In my over 25 years at NERA, I have been engaged as an economic consultant or expert witness in numerous projects involving economics and statistics. I have been qualified as an expert and testified in court on various economic and statistical issues relating to the flow of guns into the criminal market. I have testified at trials in Federal and State Courts, before the New York City Council Public Safety Committee, the American Arbitration Association and the Judicial Arbitration Mediation Service, as well as in depositions.

---

<sup>1</sup> My 2018 Report was marked as Exhibit 1 to the Declaration of John Echeverria and filed in this matter at Docket Number 53-4.



1           4. I have an A.B. from Stanford University, an M.B.A. from Yale  
2 University, and M.A. and M. Phil. degrees in Economics, also from Yale University.  
3 Prior to joining NERA, I was an Economist for both President George H. W. Bush's  
4 and President Bill Clinton's Council of Economic Advisers. My resume with recent  
5 publications and testifying experience is included as Exhibit A.  
6

7           5. This declaration reports the results of my analyses with respect to the  
8 following issues: (a) the number of rounds of ammunition fired by individuals using  
9 a gun in self-defense; and (b) the outcomes when large-capacity magazines are used  
10 in public mass shootings, including the associated number of casualties.  
11

## 12                                   **OPINIONS**

### 13           **A. Number of Rounds Fired by Individuals in Self-Defense**

14           6. Plaintiffs claim the "large-capacity magazines" covered by California  
15 Penal Code section 32310 (which are magazines capable of holding more than ten  
16 rounds) are commonly used for lawful purposes, including for self-defense.<sup>2</sup>  
17

18           7. The number of rounds commonly needed by individuals to defend  
19 themselves cannot be practically or ethically determined with controlled scientific  
20 experiments and there is no source that systematically tracks or maintains data on the  
21 number of rounds fired by individuals in self-defense. Due to these limitations, I have  
22 analyzed available data sources to estimate the number of rounds fired by individuals  
23 to defend themselves. In particular, I have analyzed data from the NRA Institute for  
24 Legislative Action, as well as my own study of news reports on incidents of self-  
25 defense with a firearm. In all, I have analyzed almost 1,000 incidents of self-defense  
26

---

27           <sup>2</sup> See, for example, Complaint for Declaratory and Injunctive Relief, filed  
28 May 17, 2017, ¶¶2, 47.

1 with a firearm and found that it is rare for a person, when using a firearm in self-  
2 defense, to fire more than ten rounds.

3 8. The NRA maintains a database of “Armed Citizen” stories describing  
4 private citizens who have successfully defended themselves, or others, using a  
5 firearm (“NRA Armed Citizen database”). According to the NRA, the “Armed  
6 Citizen” stories “highlight accounts of law-abiding gun owners in America using  
7 their Second Amendment rights to defend self, home and family.”<sup>3</sup> Although the  
8 methodology used to compile the NRA Armed Citizen database of stories is not  
9 explicitly detailed by the NRA, the NRA Armed Citizen database is a useful data  
10 source in this matter for at least three reasons. First, the Armed Citizen database was  
11 the largest collection of accounts of citizen self-defense compiled by others that I was  
12 able to find.<sup>4</sup> Second, the incidents listed in the Armed Citizen database highlight the  
13 very conduct that Plaintiffs claim the California law impedes (*i.e.*, the use of firearms  
14 by law-abiding citizens for self-defense).<sup>5</sup> Third, the Armed Citizen database is  
15 compiled by an entity that actively opposes restrictions on magazine capacity and  
16 restrictions on the possession and use of firearms in general.<sup>6</sup> In light of the positions  
17 taken by the entity compiling the data, I would expect that any selection bias would  
18 be in favor of stories that put use of guns in self-defense in the best possible light and  
19  
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21

22  
23 <sup>3</sup> NRA Institute for Legislative Action, Armed Citizens,  
<https://www.nraila.org/gun-laws/armed-citizen/>, accessed May 28, 2017.

24 <sup>4</sup> Note that in 2020, after the time my research was conducted, The Heritage  
25 Foundation began an online database of its own sample of defensive gun use  
26 incidents (<https://datavisualizations.heritage.org/firearms/defensive-gun-uses-in-the-us>).

27 <sup>5</sup> Complaint for Injunctive and Declaratory Relief, May 17, 2017, ¶47.

28 <sup>6</sup> See, for example, NRA Civil Rights Defense Fund website,  
<http://www.nradefensefund.org/current-litigation.aspx>, accessed October 12, 2018.

1 might highlight the apparent need of guns and/or multiple rounds in self-defense  
2 incidents.

3       9. My team and I performed an analysis of incidents in the NRA Armed  
4 Citizen database that occurred between January 2011 and May 2017.<sup>7</sup> For each  
5 incident, the city/county, state, venue (whether the incident occurred on the street, in  
6 the home, or elsewhere) and the number of shots fired were tabulated.<sup>8</sup> The  
7 information was gathered for each incident from both the NRA synopsis and, where  
8 available, an additional news story. An additional news story was found for over 95%  
9 of the incidents in the NRA Armed Citizen database.

10  
11       10. According to this analysis of incidents in the NRA Armed Citizen  
12 database, it is rare for a person, when using firearms in self-defense, to fire more than  
13 ten rounds. Out of 736 incidents, there were two incidents (0.3% of all incidents), in  
14 which the defender was reported to have fired more than 10 bullets.<sup>9</sup> Defenders fired  
15 2.2 shots on average.<sup>10</sup> In 18.2% of incidents, the defender did not fire any shots.

16  
17  
18       <sup>7</sup> My collection and coding of the NRA Armed Citizen stories was last  
19 performed in mid-2017.

20       <sup>8</sup> The following incidents were excluded from the analysis: (1) duplicate  
21 incidents, (2) wild animal attacks, and (3) one incident where the supposed victim  
22 later pleaded guilty to covering up a murder. When the exact number of shots fired  
23 was not specified, we used the average for the most relevant incidents with known  
24 number of shots. For example, if the story stated that “shots were fired” this would  
25 indicate that at least two shots were fired and thus we used the average number of  
26 shots fired in all incidents in which two or more shots were fired and the number of  
27 shots was specified.

28       <sup>9</sup> Note that the only two incidents with more than 10 bullets fired were added  
to the NRA Armed Citizen database in 2016 and 2017 after an earlier analysis that I  
had conducted of the database had been submitted to and cited by the Court in  
*Kolbe v. O'Malley*, Case No. CCB-13-2841 (Dkt. 79).

<sup>10</sup> Note that the analysis is focused on shots fired when using a gun in self-  
(continued...)

1 These incidents highlight the fact that in many instances defenders are able to defend  
2 themselves without firing any shots. For example, according to one of the incidents  
3 in the NRA Armed Citizen Database:

4 “A man entered a Shell station in New Orleans, La. and attempted to rob a  
5 cashier, by claiming he was carrying a gun. The cashier responded by  
6 retrieving a gun and leveling it at the thief, prompting the criminal to flee. (The  
7 Times Picayune, New Orleans, La. 09/02/15)”<sup>11</sup>

9 11. For incidents occurring in the home (56% of total), defenders fired an  
10 average of 2.1 shots, and fired no shots in 16.1% of incidents. For incidents occurring  
11 outside the home (44%) of total, defenders fired an average of 2.2 shots, and fired no  
12 shots in 20.9% of incidents.<sup>12</sup> The table below summarizes these findings:

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21 defense and therefore the average includes instances when no shots are fired. If one  
22 calculates the average excluding incidents of self-defense with a gun without firing  
shots, the average is still low, 2.6 shots when at least one shot is fired.

23 <sup>11</sup> “Gas station clerk scares off robber,” NRA-ILA Armed Citizen, September  
9, 2015.

24 <sup>12</sup> A separate study of incidents in the NRA Armed Citizen database for an  
25 earlier period (the five-year period from 1997 through 2001) found similar results.  
26 Specifically, this study found that, on average, 2.2 shots were fired by defenders  
27 and that in 28% of incidents of armed citizens defending themselves the individuals  
fired no shots at all. See, Claude Werner, “The Armed Citizen – A Five Year  
28 Analysis,” <http://gunssaveslives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables>, accessed January 10, 2014.

**Number of Shots Fired in Self-Defense  
Based on NRA Armed Citizen Incidents in the United States  
January 2011 - May 2017**

	<b>Shots Fired by Individual in Self-Defense</b>		
	<b>Overall</b>	<b>Incidents in Home</b>	<b>Outside the Home</b>
Average Shots Fired	2.2	2.1	2.2
Number of Incidents with No Shots Fired	134	66	68
Percent of Incidents with No Shots Fired	18.2%	16.1%	20.9%
Number of Incidents with >10 Shots Fired	2	2	0
Percent of Incidents with >10 Shots Fired	0.3%	0.5%	0.0%

**Notes and Sources:**

Data from NRA Armed Citizen database covering 736 incidents (of which 411 were in the home) from January 2011 through May 2017. Excludes duplicate incidents, wild animal attacks, and one incident where the supposed victim later pleaded guilty to covering up a murder.

12. We also performed the same analysis of the NRA Armed Citizen database limited to incidents that occurred in California. According to this analysis, defenders in California fired 2.0 shots on average. Out of 47 incidents, there were no incidents in which the defender was reported to have fired more than 10 bullets. In 27.7% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (60% of total), defenders fired an average of 1.9 shots, and fired no shots in 32.1% of incidents. For incidents occurring outside the home (40% of total), defenders fired an average of 2.2 shots and fired no shots in 21.1% of incidents. The table below summarizes these findings for California:

**Number of Shots Fired in Self-Defense  
Based on NRA Armed Citizen Incidents in California  
January 2011 - May 2017**

	Shots Fired by Individual in Self-Defense		
	Overall	Incidents in Home	Outside the Home
Average Shots Fired	2.0	1.9	2.2
Number of Incidents with No Shots Fired	13	9	4
Percent of Incidents with No Shots Fired	27.7%	32.1%	21.05%
Number of Incidents with >10 Shots Fired	0	0	0
Percent of Incidents with >10 Shots Fired	0.0%	0.0%	0.0%

**Notes and Sources:**

Data from NRA Armed Citizen database covering 47 incidents in California (of which 28 were in the home) from January 2011 through May 2017. Excludes repeat stories, wild animal attacks and one incident where the supposed victim later pleaded guilty to covering up a murder.

13. In addition to our analysis of incidents in the NRA Armed Citizen database, we performed a systematic, scientific study of news reports on incidents of self-defense with a firearm in the home, focusing on the same types of incidents as the NRA stories and covering the same time period.<sup>13</sup>

14. To identify relevant news stories to include in our analysis, we performed a comprehensive search of published news stories using Factiva, an online news reporting service and archive owned by Dow Jones, Inc. that aggregates news content from nearly 33,000 sources.<sup>14</sup> The search was designed to return stories about

<sup>13</sup> This analysis was initially conducted to research issues regarding self-defense in the home, which was a focus before the 2022 *New York State Rifle & Pistol Association v. Bruen* Supreme Court decision. The analysis of the NRA Armed Citizen incidents described above indicates that the number of shots fired in self-defense outside the home is similar to those inside the home.

<sup>14</sup> Factiva is often used for academic research. For example, a search for the (continued...)

1 the types of incidents that are the focus of the NRA Armed Citizen database and that  
2 Plaintiffs claim the California law impedes – in particular, the use of firearms for  
3 self-defense.<sup>15</sup> The search identified all stories that contained the following keywords  
4 in the headline or lead paragraph: one or more words from “gun,” “shot,” “shoot,”  
5 “fire,” or “arm” (including variations on these keywords, such as “shooting” or  
6 “armed”), plus one or more words from “broke in,” “break in,” “broken into,”  
7 “breaking into,” “burglar,” “intruder,” or “invader” (including variations on these  
8 keywords) and one or more words from “home,” “apartment,” or “property”  
9 (including variations on these keywords).<sup>16</sup> The search criteria match approximately  
10 90% of the NRA stories on self-defense with a firearm in the home, and an analysis  
11 of the 10% of stories that are not returned by the search shows that the typical number  
12 of shots fired in these incidents was no different than in other incidents.<sup>17</sup> The search  
13 covered the same period used in our analysis of incidents in the NRA Armed Citizen  
14  
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16

17 \_\_\_\_\_  
18 term “Factiva” on Google Scholar yields over 28,000 results. As another example, a  
19 search on Westlaw yields at least 83 expert reports that conducted news searches  
20 using Factiva.

21 <sup>15</sup> NRA Institute for Legislative Action, Armed Citizens,  
22 <https://www.nraila.org/gun-laws/armed-citizen/>, accessed May 28, 2017. See, also,  
23 Complaint for Declaratory and Injunctive Relief, filed May 17, 2017, ¶47.

24 <sup>16</sup> The precise search string used was: (gun\* or shot\* or shoot\* or fire\* or  
25 arm\*) and (“broke in” or “break in” or “broken into” or “breaking into” or burglar\*  
26 or intrud\* or inva\*) and (home\* or “apartment” or “property”). An asterisk denotes  
27 a wildcard, meaning the search includes words which have any letters in place of  
28 the asterisk. For example, a search for shoot\* would return results including  
“shoots,” “shooter” and “shooting.” The search excluded duplicate stories classified  
as “similar” on Factiva.

<sup>17</sup> The analysis and search would have used criteria to match actual incidents  
involving Plaintiffs or California residents, but, based on the Complaint for  
Injunctive and Declaratory Relief, Plaintiffs have not identified any incidents of the  
type they claim the California law will impede.



1 database (January 2011 to May 2017). The region for the Factiva search was set to  
2 “United States.” The search returned approximately 35,000 stories for the period  
3 January 2011 to May 2017.<sup>18</sup>

4 15. Using a random number generator, a random sample of 200 stories was  
5 selected for each calendar year, yielding 1,400 stories in total.<sup>19</sup> These 1,400 stories  
6 were reviewed to identify those stories that were relevant to the analysis, *i.e.*,  
7 incidents of self-defense with a firearm in or near the home. This methodology  
8 yielded a random selection of 200 news stories describing incidents of self-defense  
9 with a firearm in the home out of a population of approximately 4,800 relevant  
10 stories.<sup>20</sup> Thus, we found that out of the over 70 million news stories aggregated by  
11 Factiva between January 2011 and May 2017, approximately 4,800 news stories were  
12 on incidents of self-defense with a firearm in the home. We analyzed a random  
13 selection of 200 of these stories.  
14  
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16  
17 <sup>18</sup> The effect of using alternative keywords was considered. For example,  
18 removing the second category (“broke in” or “break in” or “broken into” or  
19 “breaking into” or burglar\* or intrud\* or inva\*) and including incidents in which  
20 the assailant was already inside the home and/or was known to the victim was  
21 considered. *A priori*, there was no reason to believe that a larger number of shots  
22 would be used in these incidents and based on an analysis of the NRA stories we  
23 found that the number of shots fired in incidents when defending against someone  
24 already in the home was not different than those with an intruder.

25 <sup>19</sup> The random numbers were generated by sampling with replacement.

26 <sup>20</sup> The approximately 4,800 relevant news stories were estimated by  
27 calculating the proportion of relevant news stories from the 200 randomly selected  
28 stories each year and applying that proportion to the number of results returned by  
the search for each year of the analysis. For example, in 2017, 33 out of 200 (17%)  
randomly selected news stories involved incidents of self-defense with a firearm in  
the home. Applying that proportion to the 1,595 results from the Factiva search in  
2017 yields 263 relevant news stories in 2017. This process was repeated every  
year to arrive at a total of 4,841 relevant news stories from 2011-2017.

1           16. For each news story, the city/county, state and number of shots fired  
2 were tabulated. When tabulating the number of shots fired, we used the same  
3 methodology as we used to analyze stories in the NRA Armed Citizen database.<sup>21</sup>  
4 We then identified other stories describing the same incident on Factiva based on the  
5 date, location and other identifying information, and recorded the number of times  
6 that each incident was covered by Factiva news stories.

8           17. To determine the average number of shots fired per *incident*, we first  
9 determined the average number of shots fired per *story* and then analyzed the number  
10 of stories per incident. According to our study of a random selection from  
11 approximately 4,800 relevant stories on Factiva describing incidents of self-defense  
12 with a firearm in the home, the average number of shots fired per story was 2.61.  
13 This is not a measure of the average shots fired *per incident*, however, because the  
14 number of stories covering an incident varies, and the variation is not independent of  
15 the number of shots fired. We found that there was a statistically significant  
16 relationship between the number of shots fired in an incident and the number of news  
17 stories covering an incident.<sup>22</sup> We found that on average the more shots fired in a  
18  
19

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20           <sup>21</sup> When the exact number of shots fired was not specified, we used the  
21 average for the most relevant incidents with known number of shots. For example,  
22 if the story stated that “shots were fired” this would indicate that at least two shots  
23 were fired and thus we used the average number of shots fired in all incidents in  
which two or more shots were fired and the number of shots was specified.

24           <sup>22</sup> Based on a linear regression of the number of news stories as a function of  
25 the number of shots fired, the results were statistically significant at the 1% level  
26 (more stringent than the 5% level commonly used by academics and accepted by  
27 courts. See, for example, Freedman, David A., and David H. Kaye, “Reference  
28 Guide on Statistics,” *Reference Manual on Scientific Evidence* (Washington, D.C.:  
The National Academies Press, 3rd ed., 2011), pp. 211-302, and Fisher, Franklin  
M., “Multiple Regression in Legal Proceedings,” 80 *Columbia Law Review* 702  
(1980).)

defensive gun use incident, the greater the number of stories covering an incident. For example, as shown in the table below, we found that incidents in Factiva news stories with zero shots fired were covered on average by 1.8 news stories, while incidents with six or more shots fired were covered on average by 10.4 different news stories.

**Average Number of News Stories by Number of Shots Fired  
In Factiva Stories on Incidents of Self-Defense with a Firearm  
January 2011 - May 2017**

Number of Shots Fired By Defender	Average Number of News Stories
0	1.8
1 to 2	2.8
3 to 5	3.8
6 or more	10.4

**Notes and Sources:**

Based on news stories describing defensive gun use in a random selection of Factiva stories between 2011 and May 2017 using the search string: (gun\* or shot\* or shoot\* or fire\* or arm\*) and ("broke in" or "break in" or "broken into" or "breaking into" or burglar\* or intrud\* or inva\*) and (home\* or "apartment" or "property"), with region set to "United States" and excluding duplicate stories classified as "similar" on Factiva. Methodology for tabulation of shots fired as per footnote 16.

18. After adjusting for this disparity in news coverage, we find that the average number of shots fired per incident covered is 2.34.<sup>23</sup> Note that this

<sup>23</sup> The adjustment reflects the probability that a news story on a particular incident would be selected at random from the total population of news stories on incidents of self-defense with a firearm in the home. The formula used for the adjustment is:

$$\frac{\sum_{i=1}^n \left( \text{Shots Fired}_i \times \frac{R_i}{C_i} \right)}{\sum_{i=1}^n \left( \frac{R_i}{C_i} \right)}$$

where:

1 adjustment does not take into account the fact that some defensive gun use incidents  
 2 may not be picked up by *any* news story. Given the observed relationship that there  
 3 are more news stories when there are more shots fired, one would expect that the  
 4 incidents that are not written about would on average have fewer shots than those  
 5 with news stories. Therefore, the expectation is that these results, even after the  
 6 adjustment, are biased upward (*i.e.*, estimating too high an average number of shots  
 7 and underestimating the percent of incidents in which no shots were fired).  
 8

9 19. As shown in the table below, according to the study of Factiva news  
 10 stories, in 11.6% of incidents the defender did not fire any shots, and simply  
 11 threatened the offender with a gun. In 97.3% of incidents the defender fired 5 or  
 12 fewer shots. There were no incidents where the defender was reported to have fired  
 13 more than 10 bullets.  
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26  $n$  = random selection of news stories on incidents of self-defense with a firearm in  
 27 the home

28  $R_i$  = number of search results on Factiva in the calendar year of incident  $i$

$C_i$  = number of news stories covering incident  $i$

**Number of Shots Fired in Self-Defense in the Home  
Based on Random Selection of News Stories in Factiva  
January 2011 - May 2017**

Estimated population of news reports in Factiva on self-defense with a firearm in the home	4,841
Random selection of news reports	200
Average Number of Shots Fired	2.34
Median Number of Shots Fired	2.03
Number of Incidents with No Shots Fired	23
Percent of Incidents with No Shots Fired	11.6%
Number of Incidents with $\leq 5$ Shots Fired	195
Percent of Incidents with $\leq 5$ Shots Fired	97.3%
Number of Incidents with $>10$ Shots Fired	0
Percent of Incidents with $>10$ Shots Fired	0.0%

**Notes and Sources:**

Based on news stories describing defensive gun use in a random selection of Factiva stories between 2011 and May 2017 using the search string: (gun\* or shot\* or shoot\* or fire\* or arm\*) and ("broke in" or "break in" or "broken into" or "breaking into" or burglar\* or intrud\* or inva\*) and (home\* or "apartment" or "property"), with region set to "United States" and excluding duplicate stories classified as "similar" on Factiva. Methodology for tabulation of shots fired as per footnote 16. Number of incidents probability-weighted as per footnote 18.

20. In sum, an analysis of incidents in the NRA Armed Citizen database, as well as our own study of a random sample from approximately 4,800 news stories describing incidents of self-defense with a firearm, indicates that it is rare for a person, when using a firearm in self-defense, to fire more than ten rounds.

**B. Public Mass Shootings**

21. We analyzed the use of large-capacity magazines in public mass shootings using four sources for identifying public mass shootings: Mother Jones,<sup>24</sup> the Citizens Crime Commission of New York City,<sup>25</sup> the Washington Post<sup>26</sup> and the Violence Project.<sup>27, 28</sup> The analysis focused on public mass shootings because it is my understanding that the state of California is concerned about public mass shootings and enacted the challenged law, in part, to address the problem of public mass shootings.

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<sup>24</sup> “US Mass Shootings, 1982-2022: Data From Mother Jones’ Investigation,” Mother Jones, updated October 14, 2022, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>.

<sup>25</sup> “Mayhem Multiplied: Mass Shooters and Assault Weapons,” Citizens Crime Commission of New York City, February 2018 update. Additional details on the mass shootings were obtained from an earlier source by the Citizens Crime Commission. “Mass Shooting Incidents in America (1984-2012),” Citizens Crime Commission of New York City, <http://www.nycrimecommission.org/mass-shooting-incidents-america.php>, accessed June 1, 2017.

<sup>26</sup> “The terrible numbers that grow with each mass shooting,” The Washington Post, updated May 12, 2021.

<sup>27</sup> “Mass Shooter Database,” The Violence Project, <https://www.theviolenceproject.org/mass-shooter-database/>, updated May 14, 2022.

<sup>28</sup> When I began research in 2013 on mass shootings, I found Mother Jones and Citizens Crime Commission to maintain the most comprehensive lists of relevant mass shootings. More recently, two additional sources, the Washington Post and The Violence Project, have compiled lists of public mass shootings. The Violence Project began work on its mass shootings database in September 2017 and its database first went online in November 2019, while the Washington Post first published its mass shootings database in February 14, 2018. There is substantial overlap between the mass shootings in all four sources. For example, the Mother Jones data contains 93% of the mass shootings in the Citizens Crime Commission data for the years covered by both data sources, 1984 to 2016, while the Washington Post contains 94% of the mass shootings in The Violence Project data for the years covered by both data sources, 1966 to 2019.

1           22. The type of incident considered a mass shooting is generally consistent  
2 across the four sources. In particular, all four sources consider an event a mass  
3 shooting if four or more people were killed in a public place in one incident, and  
4 exclude incidents involving other criminal activity such as a robbery.<sup>29</sup>  
5

6           <sup>29</sup> Citizen Crime Commission describes a mass shooting as “four or more  
7 victims killed” in “a public place” that were “unrelated to another crime (e.g.,  
8 robbery, domestic violence).” Citizen Crime notes that its sources include “news  
9 reports and lists created by government entities and advocacy groups.” “Mayhem  
10 Multiplied: Mass Shooters and Assault Weapons,” Citizens Crime Commission of  
11 New York City, February 2018 update.

12           Mother Jones describes a mass shooting as “indiscriminate rampages in  
13 public places resulting in four or more victims killed by the attacker,” excluding  
14 “shootings stemming from more conventionally motivated crimes such as armed  
15 robbery or gang violence.” Although in January 2013 Mother Jones changed its  
16 definition of mass shooting to include instances when three or more people were  
17 killed, for this declaration we only analyzed mass shootings where four or more  
18 were killed to be consistent with the definition of the other three sources. “A Guide  
19 to Mass Shootings in America,” Mother Jones, updated October 14, 2022,  
20 <http://www.motherjones.com/politics/2012/07/mass-shootings-map>. See also,  
21 “What Exactly is a Mass Shooting,” Mother Jones, August 24, 2012.  
22 <http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting>.

23           The Washington Post source describes a mass shooting as “four or more  
24 people were killed, usually by a lone shooter” excluding “shootings tied to  
25 robberies that went awry” and “domestic shootings that took place exclusively in  
26 private homes.” A The Washington Post notes that its sources include “Grant  
27 Duwe, author of ‘Mass Murder in the United States: A History,’ Mother Jones and  
28 Washington Post research,” as well as “Violence Policy Center, Gun Violence  
Archive; FBI 2014 Study of Active Shooter Incidents; published reports.” “The  
terrible numbers that grow with each mass shooting,”  
The Washington Post, updated May 12,  
2021, <https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/>.

29           The Violence Project indicates that it uses the Congressional Research  
30 Service definition of a mass shooting: “a multiple homicide incident in which four  
31 or more victims are murdered with firearms—not including the offender(s)—within  
32 one event, and at least some of the murders occurred in a public location or  
33 locations in close geographical proximity (e.g., a workplace, school, restaurant, or  
34 (continued...)



23. Each of the four sources contains data on mass shootings covering different time periods. The Mother Jones data covers 112 mass shootings from 1982 to October 13, 2022,<sup>30</sup> the Citizens Crime Commission data covers 80 mass shootings from 1984 to February 2018,<sup>31</sup> the Washington Post data covers 185 mass shootings from 1966 to May 12, 2021,<sup>32</sup> and The Violence Project data covers 182 mass shootings from 1966 to May 14, 2022.<sup>33, 34</sup>

other public settings), and the murders are not attributable to any other underlying criminal activity or commonplace circumstance (armed robbery, criminal competition, insurance fraud, argument, or romantic triangle).” The Violence Project notes that its sources include “Primary Sources: Written journals / manifestos / suicide notes etc., Social media and blog posts, Audio and video recordings, Interview transcripts, Personal correspondence with perpetrators” as well as “Secondary Sources (all publicly available): Media (television, newspapers, magazines), Documentary films, Biographies, Monographs, Peer-reviewed journal articles, Court transcripts, Law Enforcement records, Medical records, School records, Autopsy reports.” “Mass Shooter Database,” The Violence Project, <https://www.theviolenceproject.org/methodology/>, accessed January 17, 2020.

<sup>30</sup> “A Guide to Mass Shootings in America,” Mother Jones, updated October 14, 2022, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>. Excludes mass shootings where only three people were killed. Note this analysis of the Mother Jones data may not match other analyses because Mother Jones periodically updates its historical data.

<sup>31</sup> “Mayhem Multiplied: Mass Shooters and Assault Weapons,” *Citizens Crime Commission of New York City*, February 2018 update.

<sup>32</sup> “The terrible numbers that grow with each mass shooting,” *The Washington Post*, updated May 12, 2021, <https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/>.

<sup>33</sup> “Mass Shooter Database,” *The Violence Project* <https://www.theviolenceproject.org/mass-shooter-database/>, updated May 14, 2022.

<sup>34</sup> Note that I have updated this mass shooting analysis to include more recent incidents, as well as more recently available details. In my 2017 declaration in *Virginia Duncan et al. v. California Attorney General*, I included data on mass shootings through April 2017. In my 2018 declaration in *Rupp v. California Attorney General*, I updated the analysis to include data on mass shootings through

(continued...)

24. Note that the two more recently compiled sources of mass shootings, the Washington Post and The Violence Project, include additional mass shootings that were not covered by either Mother Jones or Citizens Crime Commission. In general, we found that these additional mass shootings were less covered by the media and involved fewer fatalities and/or injuries than the ones previously identified by Mother Jones or Citizens Crime Commission. For example, using the mass shooting data for the period 1982 through 2019, we found that the median number of news stories for a mass shooting included in Mother Jones and/or Citizen Crime Commission was 317, while the median for the additional mass shootings identified in the Washington Post and/or The Violence Project was 28.<sup>35</sup> In addition, we found an average of 21 fatalities or injuries for a mass shooting included in Mother Jones and/or Citizen Crime Commission, while only 6 fatalities or injuries for the additional mass shootings identified in the Washington Post and/or The Violence Project.

September 2018. The analyses in both of these declarations included mass shootings only from Mother Jones and the Citizen Crime Commission. In my 2020 declaration in *James Miller et al. v. California Attorney General*, I updated the analysis to include mass shootings through December 2019 and added mass shootings from two more sources, the Washington Post and the Violence Project. The number of mass shootings, as well as some details about the shootings, are not identical across these declarations for three main reasons. First, I have updated the analysis to include more recent incidents as well as more recently available details. Second, starting in 2020, I added two more sources (Washington Post and Violence Project), which include additional mass shootings and details not included in the initial sources. Third, even though Mother Jones included instances when three or more people were killed, for my declarations and reports starting in 2020, I only included mass shootings where four or more were killed to be consistent with the definition of the other three sources.

<sup>35</sup> The search was conducted over all published news stories on Factiva. The search was based on the shooter's name and the location of the incident over the period from one week prior to three months following each mass shooting.

1           25. We combined the data from the four sources for the period 1982 through  
2 2019, and searched news stories on each mass shooting to obtain additional details  
3 on the types of weapons used as well as data on shots fired where available. We  
4 identified, based on this publicly available information, which mass shootings  
5 involved the use of large-capacity magazines. See attached Exhibit B for a summary  
6 of the combined data based on Mother Jones, Citizens Crime Commission, the  
7 Washington Post, the Violence Project, and news reports.

9           **1. Use of large-capacity magazines in public mass shootings**

10           26. Based on the data through 2019, we found that large-capacity magazines  
11 (those with a capacity to hold more than 10 rounds of ammunition) are often used in  
12 public mass shootings. Magazine capacity is known in 105 out of the 161 mass  
13 shootings (or 65%) considered in this analysis. Out of the 105 mass shootings with  
14 known magazine capacity, 63 (or 60%) involved large-capacity magazines. Even  
15 assuming the mass shootings with unknown magazine capacity *all* did not involve  
16 large-capacity magazines, 63 out of 161 mass shootings or 39% of mass shootings  
17 involved large capacity magazines. (See table below.)  
18

19           27. Based on our analysis of the public mass shootings data through 2019,  
20 casualties were higher in the mass shootings that involved weapons with large-  
21 capacity magazines than in other mass shootings. In particular, we found an average  
22 number of fatalities or injuries of 27 per mass shooting with a large-capacity  
23 magazine versus 9 for those without. Focusing on just fatalities, we found an average  
24 number of fatalities of 10 per mass shooting with a large-capacity magazine versus 6  
25 for those without. (See table below.)  
26  
27  
28

**Numbers of Fatalities and Injuries in Public Mass Shootings  
January 1982 - December 2019**

<u>Weapon Used</u>	<u># of Incidents</u>	<u>Average # of</u>		
		<u>Fatalities</u>	<u>Injuries</u>	<u>Total</u>
LCM	63	10	17	27
Non-LCM	42	6	3	9
Unknown	56	5	3	7

**Notes and Sources:**

Casualty figures exclude the shooter. LCM classification and casualties based on review of stories from Factiva/Google searches.

28. In addition to the analysis using data through 2019 discussed above, we analyzed more recent mass shootings, including from January 2020 through October 2022.<sup>36</sup> Based on our analysis of this more recent data, we found similar results. In particular, we found casualties were higher in the mass shootings that involved weapons with large-capacity magazines than in other mass shootings. The table below summarizes these results using data for the period 1982 through October 2022.

<sup>36</sup> Note, however, that the Citizens Crime Commission data was last updated in February 2018 and the Washington Post was last updated in May 2021.

**Numbers of Fatalities and Injuries in Public Mass Shootings  
January 1982 - October 2022**

Weapon Used	# of Incidents	Average # of		
		Fatalities	Injuries	Total
LCM	73	10	16	25
Non-LCM	42	6	3	9
Unknown	64	5	3	7

**Notes and Sources:**

Casualty figures exclude the shooter. LCM classification and casualties based on review of stories from Factiva/Google searches.

29. Our results are consistent with those of other studies that have analyzed mass shootings. Note that although the other studies are based on alternate sets of mass shootings, including covering different years and defining mass shootings somewhat differently, the results are similar in finding that fatalities and injuries are larger in mass shootings in which large capacity magazines are involved. A 2019 academic article published in the *American Journal of Public Health* by Klarevas et al. found that “[a]ttacks involving LCMs resulted in a 62% higher mean average death toll.”<sup>37</sup> This study found an average number of fatalities of 11.8 per mass shooting with a large-capacity magazine versus 7.3 for those without. The results in this study were based on 69 mass shootings between 1990 and 2017.<sup>38</sup> An analysis

<sup>37</sup> Louis Klarevas, Andrew Conner, and David Hemenway, “The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017,” *American Journal of Public Health* (2019).

<sup>38</sup> The Klarevas et al. study defines mass shootings as “intentional crimes of gun violence with 6 or more victims shot to death, not including the perpetrators” and, unlike my analysis, does not exclude incidents in private places or incidents involving other criminal activity such as robbery.

1 of the mass shootings detailed in a 2016 article by Gary Kleck yielded similar results  
2 (21 average fatalities or injuries in mass shootings involving large-capacity  
3 magazines versus 8 for those without).<sup>39</sup> The Kleck study covered 88 mass shooting  
4 incidents between 1994 and 2013.<sup>40</sup> In a 2018 study, Koper et al. found that mass  
5 shootings involving assault weapons and large-capacity magazines resulted in an  
6 average of 13.7 victims versus 5.2 for other cases.<sup>41</sup> The Koper et al. study covered  
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22 <sup>39</sup> Kleck, Gary, “Large-Capacity Magazines and the Casualty Counts in Mass  
23 Shootings: The Plausibility of Linkages,” 17 *Justice Research and Policy* 28  
(2016).

24 <sup>40</sup> The Kleck study defines a mass shooting as “one in which more than six  
25 people were shot, either fatally or nonfatally, in a single incident.” See, Kleck,  
26 Gary, “Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The  
Plausibility of Linkages,” 17 *Justice Research and Policy* 28 (2016).

27 <sup>41</sup> Koper et al., “Criminal Use of Assault Weapons and High-Capacity  
28 Semiautomatic Firearms: an Updated Examination of Local and National Sources,”  
*Journal of Urban Health* (2018).

145 mass shootings between 2009 and 2015.<sup>42</sup> The table below summarizes their results.

Comparison of Studies on the Use of Large-Capacity Magazines in Mass Shootings						
Source	# Victims	Criteria Other Criteria	Time Period	# of Incidents	Avg. # of Fatalities + Injuries / Fatalities	
(1)	(2)	(3)	(4)	(5)	With LCM	Without LCM
Allen (2020) <sup>1</sup>	at least 4 <u>killed</u> <sup>2</sup>	Includes shootings "in a public place in one incident, and exclude[s] incidents involving other criminal activity such as a robbery"	1982-2019	161	27 / 10	9 / 6
Kleck et al. (2016) <sup>3</sup>	at least 6 <u>shot</u>	Excludes "spree shootings" and includes shootings in both "public" and "private" places	1994-2013	88	21 / n/a	8 / n/a
Klarevas et al. (2019) <sup>4</sup>	at least 6 <u>killed</u> <sup>2</sup>	Includes "intentional crimes of gun violence"	1990-2017	69	n/a / 12	n/a / 7
Koper et al. (2018) <sup>5</sup>	at least 4 <u>killed</u> <sup>2</sup>	Includes shootings in both public and private places	2009-2015	145	14 / n/a	5 / n/a
<b>Notes and Sources:</b> <sup>1</sup> Declaration of Lucy P. Allen in Support of Defendants' Opposition to Motion for Preliminary Injunction in <i>James Miller et al. v. Xavier Becerra et al.</i> , dated January 23, 2020. <sup>2</sup> Excluding shooter. <sup>3</sup> Kleck, Gary, "Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages," 17 Justice Research and Policy 28 (2016). <sup>4</sup> Klarevas et al., "The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings 1990-2017," American Journal of Public Health (2019). <sup>5</sup> Koper et al., "Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources," Journal of Urban Health (2018). Note that the Koper et al study includes shootings involving both LCM and assault weapons.						

## 2. Number of rounds fired in public mass shootings with large-capacity magazines

30. In addition, the data indicates that it is common for offenders to fire more than ten rounds when using a gun with a large-capacity magazine in mass shootings. Of the 63 mass shootings we analyzed through 2019 that are known to have involved a large-capacity magazine, there are 43 in which the number of shots

<sup>42</sup> The Koper et al. study defined mass shooting as "incidents in which four or more people were murdered with a firearm, not including the death of the shooter if applicable and irrespective of the number of additional victims shot but not killed."



1 fired is known. Shooters fired more than ten rounds in 40 of the 43 incidents, and the  
2 average number of shots fired was 103.

3 31. Updating this analysis to include the 179 mass shootings through  
4 October 2022 yields similar results. In particular, of the 73 mass shootings we  
5 analyzed through 2022 that are known to have involved a large-capacity magazine,  
6 there are 49 in which the number of shots fired is known. Shooters fired more than  
7 ten rounds in 46 of the 49 incidents, and the average number of shots fired was 102.

9 **3. Percent of mass shooters' guns legally obtained**

10 32. The data on public mass shootings indicates that the majority of guns  
11 used in these mass shootings were obtained legally.<sup>43</sup> Of the 161 mass shootings  
12 analyzed through 2019, there are 100 where it can be determined whether the gun  
13 was obtained legally. According to the data, shooters in 77% of mass shootings  
14 obtained their guns legally (77 of the 100 mass shootings) and 79% of the guns used  
15 in these 100 mass shootings were obtained legally (184 of the 234 guns). (Note that  
16 even if one assumes that *all* of the mass shootings where it is not known were  
17 assumed to be illegally obtained, then one would find 48% of the mass shootings and  
18 61% of the guns were obtained legally.) Updating this analysis to use the 179 mass  
19 shootings through 2022 yields similar results.<sup>44</sup>  
20  
21  
22  
23  
24

25 <sup>43</sup> The determination of whether guns were obtained legally is based on  
26 Mother Jones and Washington Post reporting.

27 <sup>44</sup> In particular, the 77% and 79% become 79% and 80% when updating the  
28 analysis to include mass shootings through 2022. The 48% and 61% become 50%  
and 62%.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of  
2 the United States of America that the foregoing is true and correct.

3 Executed on November 10, 2022, at New York, New York.  
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9 Lucy Allen  
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## INDEX OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>	<b>Page No.</b>
A	Curriculum Vitae of Lucy P. Allen	1-7
B	Public Mass Shootings Data, 1982 – October 2022	8-17

## **EXHIBIT A**



Lucy P. Allen  
Managing Director

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New York, New York 10036  
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lucy.allen@nera.com  
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## Exhibit A

### LUCY P. ALLEN MANAGING DIRECTOR

#### Education

##### YALE UNIVERSITY

M.Phil., Economics, 1990  
M.A., Economics, 1989  
M.B.A., 1986

##### STANFORD UNIVERSITY

A.B., Human Biology, 1981

#### Professional Experience

1994-Present

##### **National Economic Research Associates, Inc.**

Managing Director. Responsible for economic analysis in the areas of securities, finance and environmental and tort economics.

Senior Vice President (2003-2016).

Vice President (1999-2003).

Senior Consultant (1994-1999).

1992-1993

##### **Council of Economic Advisers, Executive Office of the President**

Staff Economist. Provided economic analysis on regulatory and health care issues to Council Members and interagency groups. Shared responsibility for regulation and health care chapters of the *Economic Report of the President, 1993*. Working Group member of the President's National Health Care Reform Task Force.

1986-1988

1983-1984

##### **Ayers, Whitmore & Company (General Management Consultants)**

Senior Associate. Formulated marketing, organization, and overall business strategies including:

Plan to improve profitability of chemical process equipment manufacturer.

Merger analysis and integration plan of two equipment manufacturers.

Evaluation of Korean competition to a U.S. manufacturer.

Diagnostic survey for auto parts manufacturer on growth obstacles.

Lucy P. Allen

	Marketing plan to increase international market share for major accounting firm.
Summer 1985	<b>WNET/Channel Thirteen, Strategic Planning Department</b> <u>Associate</u> . Assisted in development of company's first long-term strategic plan. Analyzed relationship between programming and viewer support.
1981-1983	<b>Arthur Andersen &amp; Company</b> <u>Consultant</u> . Designed, programmed and installed management information systems. Participated in redesign/conversion of New York State's accounting system. Developed municipal bond fund management system, successfully marketed to brokers. Participated in President's Private Sector Survey on Cost Control (Grace Commission). Designed customized tracking and accounting system for shipping company.
Teaching 1989- 1992	<b>Teaching Fellow, Yale University</b> Honors Econometrics Intermediate Microeconomics Competitive Strategies Probability and Game Theory Marketing Strategy Economic Analysis

## **Publications**

"Snapshot of Recent Trends in Asbestos Litigation: 2022 Update," (co-author), NERA Report, 2022.

"Snapshot of Recent Trends in Asbestos Litigation: 2021 Update," (co-author), NERA Report, 2021.

"The Short-Term Effect of Goodwill Impairment Announcements on Companies' Stock Prices" (co-author), *International Journal of Business, Accounting and Finance*, Volume 14, Number 2, Fall 2020.

"Snapshot of Recent Trends in Asbestos Litigation: 2020 Update," (co-author), NERA Report, 2020.

"Snapshot of Recent Trends in Asbestos Litigation: 2019 Update," (co-author), NERA Report, 2019.

"Snapshot of Recent Trends in Asbestos Litigation: 2018 Update," (co-author), NERA Report, 2018.

Lucy P. Allen

“Trends and the Economic Effect of Asbestos Bans and Decline in Asbestos Consumption and Production Worldwide,” (co-author), *International Journal of Environmental Research and Public Health*, 15(3), 531, 2018.

“Snapshot of Recent Trends in Asbestos Litigation: 2017 Update,” (co-author), NERA Report, 2017.

“Asbestos: Economic Assessment of Bans and Declining Production and Consumption,” World Health Organization, 2017.

“Snapshot of Recent Trends in Asbestos Litigation: 2016 Update,” (co-author), NERA Report, 2016.

“Snapshot of Recent Trends in Asbestos Litigation: 2015 Update,” (co-author), NERA Report, 2015.

“Snapshot of Recent Trends in Asbestos Litigation: 2014 Update,” (co-author), NERA Report, 2014.

“Snapshot of Recent Trends in Asbestos Litigation: 2013 Update,” (co-author), NERA Report, 2013.

“Asbestos Payments per Resolved Claim Increased 75% in the Past Year – Is This Increase as Dramatic as it Sounds? Snapshot of Recent Trends in Asbestos Litigation: 2012 Update,” (co-author), NERA Report, 2012.

“Snapshot of Recent Trends in Asbestos Litigation: 2011 Update,” (co-author), NERA White Paper, 2011.

“Snapshot of Recent Trends in Asbestos Litigation: 2010 Update,” (co-author), NERA White Paper, 2010.

“Settlement Trends and Tactics” presented at Securities Litigation During the Financial Crisis: Current Development & Strategies, hosted by the New York City Bar, New York, New York, 2009.

“Snapshot of Recent Trends in Asbestos Litigation,” (co-author), NERA White Paper, 2009.

“China Product Recalls: What’s at Stake and What’s Next,” (co-author), NERA Working Paper, 2008.

“Forecasting Product Liability by Understanding the Driving Forces,” (co-author), The International Comparative Legal Guide to Product Liability, 2006.

“Securities Litigation Reform: Problems and Progress,” Viewpoint, November 1999, Issue No. 2 (co-authored).



Lucy P. Allen

“Trends in Securities Litigation and the Impact of the PSLRA,” Class Actions & Derivative Suits, American Bar Association Litigation Section, Vol. 9, No. 3, Summer 1999 (co-authored).

“Random Taxes, Random Claims,” Regulation, Winter 1997, pp. 6-7 (co-authored).

### **Depositions & Testimony (4 years)**

Declaration before the United States District Court, Eastern District of Washington at Yakima, in *Brumback et al. v. Ferguson et al.*, 2022.

Trial Testimony before the Supreme Court of the State of New York, County of New York, in *MUFG Union Bank, N.A. (f/k/a Union Bank, N.A.) v. Axos Bank (f/k/a Bank of Internet USA), et al.*, 2022.

Supplemental Declaration before the United States District Court, Southern District of California, in *James Miller et al. v. California Attorney General et al.*, 2022.

Declaration before the United States District Court, Northern District of Texas, Dallas Division, in *Samir Ali Cherif Benouis v. Match Group, Inc., et al.*, 2022.

Deposition Testimony before the United States District Court for the Eastern District of Virginia, in *Plymouth County Retirement System, et al. v. Evolent Health, Inc., et al.*, 2022.

Deposition Testimony before the United States District Court for the Northern District of Georgia, in *Public Employees’ Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, 2022.

Deposition Testimony before the United States District Court for the Southern District of New York, in *SEC v. AT&T, Inc. et al.*, 2022.

Deposition Testimony before the Superior Court of New Jersey, Hudson County, in *Oklahoma Firefighters Pension and Retirement System vs. Newell Brands Inc., et al.*, 2022.

Deposition Testimony before the United States District Court for the District of Pennsylvania, in *Allegheny County Employees, et al. v. Energy Transfer LP., et al.*, 2022.

Deposition Testimony before the United States District Court, District of Tennessee, in *St. Clair County Employees’ Retirement System v. Smith & Acadia Healthcare Company, Inc., et al.*, 2022.

Deposition Testimony before the United States District Court, District of Colorado, in *Cipriano Correa, et al. v. Liberty Oilfield Services Inc., et al.*, 2022.

Lucy P. Allen

Deposition Testimony before the Superior Court of New Jersey, Hudson County, in *Oklahoma Firefighters Pension and Retirement System vs. Newell Brands Inc., et al.*, 2021.

Deposition Testimony before the Superior Court of New Jersey, Middlesex County, in *Dana Transport, Inc. et al., vs. PNC Bank et al.*, 2021.

Deposition Testimony before the United States District Court, Western District of North Carolina, in *Cheyenne Jones and Sara J. Gast v. Coca-Cola Consolidated Inc., et al.*, 2021.

Testimony and Deposition Testimony before the Court of Chancery of the State of Delaware in *Bardy Diagnostics Inc. v. Hill-Rom, Inc. et al.*, 2021.

Deposition Testimony before the United States Bankruptcy Court, Southern District of Texas, Houston Division, in *Natixis Funding Corporation v. Genon Mid-Atlantic, LLC*, 2021.

Testimony and Deposition Testimony before the United States District Court, Southern District of California, in *James Miller et al. v. Xavier Becerra et al.*, 2021.

Deposition Testimony before the Court of Chancery of the State of Delaware in *Arkansas Teacher Retirement System v. Alon USA Energy, Inc., et al.*, 2021.

Deposition Testimony before the United States District Court, Western District of Oklahoma, in *Kathleen J. Myers v. Administrative Committee, Seventy Seven Energy, Inc. Retirement & Savings Plan, et al.*, 2020.

Deposition Testimony before the United States District Court, Middle District of Tennessee, in *Nikki Bollinger Grae v. Corrections Corporation of America, et al.*, 2020.

Deposition Testimony before the Supreme Court of the State of New York, County of New York, in *MUFG Union Bank, N.A. (f/k/a Union Bank, N.A.) v. Axos Bank (f/k/a Bank of Internet USA), et al.*, 2020.

Declaration before the United States District Court for the Northern District of Georgia, in *Sunil Amin et al. v. Mercedes-Benz USA, LLC and Daimler AG*, 2020.

Deposition Testimony before the United States District Court, Western District of Washington at Seattle, in *In re Zillow Group, Inc. Securities Litigation*, 2020.

Declaration before the United States District Court for the Southern District of California in *James Miller et al. v. Xavier Becerra et al.*, 2020.

Deposition Testimony before the United States District Court, Middle District of Tennessee, in *Zwick Partners LP and Aparna Rao v. Quorum Health Corporation*, 2019.

Lucy P. Allen

Testimony and Declaration before the United States District Court, Southern District of Iowa, in *Mahaska Bottling Company, Inc., et al. v. PepsiCo, Inc. and Bottling Group, LLC*, 2019.

Declaration before the United States District Court Western District of Oklahoma in *In re: Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litigation*, 2019.

Testimony before the United States District Court, Southern District of New York, in *Chicago Bridge & Iron Company N.V. Securities Litigation*, 2019.

Deposition Testimony before the United States District Court, Middle District of Florida, in *Jacob J. Beckel v. Fagron Holdings USA, LLC et al.*, 2019.

Deposition Testimony before the Clark County District Court of Nevada in *Round Square Company Limited v. Las Vegas Sands, Inc.*, 2018.

Deposition Testimony before the United States District Court, Middle District of Tennessee, in *Nikki Bollinger Grae v. Corrections Corporation of America et al.*, 2018.

Deposition Testimony before the District Court for the State of Nevada in *Dan Schmidt v. Liberator Medical Holdings, Inc., et al.*, 2018.

Deposition Testimony before the United States District Court, Northern District of Illinois, Eastern Division, in *In re the Allstate Corporation Securities Litigation*, 2018.

Deposition Testimony before the United States District Court, Central District of California, Southern Division, in *Steven Rupp et al. v. Xavier Becerra et al.*, 2018.

Declaration before the Superior Court of the State of Vermont in *Vermont Federation of Sportsmen's Club et al. v. Matthew Birmingham et al.*, 2018.

Testimony before the American Arbitration Association in *Arctic Glacier U.S.A, Inc. and Arctic Glacier U.S.A., Inc. Savings and Retirement Plan v. Principal Life Insurance Company*, 2018.

Deposition Testimony before the United States District Court, Southern District of New York, in *Marvin Pearlstein v. Blackberry Limited et al.*, 2018.

Deposition Testimony before the United States District Court, Eastern District of Texas, in *Alan Hall and James DePalma v. Rent-A-Center, Inc., Robert D. Davis, and Guy J. Constant*, 2018.

Deposition Testimony before the United States District Court, Southern District of Iowa, in *Mahaska Bottling Company, Inc., et al. v. PepsiCo, Inc. and Bottling Group, LLC*, 2018.

Lucy P. Allen

Testimony, Deposition Testimony and Declaration before the United States District Court, District of New Jersey, in *Association of New Jersey Rifle & Pistol Clubs, Inc. et al. v. Gurbir Grewal et al.*, 2018.

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Deposition Testimony before the United States District Court, Southern District of California, in *Virginia Duncan, et al. v. Xavier Becerra, et al.*, 2018.

## **EXHIBIT B**

**Exhibit B**  
**Public Mass Shootings Data**  
**1982 – October 2022**

Case	Location	Date	Source	Large Capacity Mag.? <sup>a</sup>	Fatalities <sup>b</sup>	Injuries <sup>c</sup>	Total Fatalities & Injuries <sup>c</sup>	Shots Fired <sup>d</sup>	Gun(s) Obtained Legally? <sup>e</sup>	Offender(s)' Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

*18 mass shootings since Allen (2020):*

1. Raleigh spree shooting	Heddingham, NC	10/13/22	MJ	-	5	2	7	-	-	2
2. Highland Park July 4 parade shooting	Highland Park, IL	7/4/22	MJ	Yes	7	48	55	83 <sup>ba</sup>	Yes	1
3. Tulsa medical center shooting	Tulsa, OK	6/1/22	MJ	-	4	9 <sup>bb</sup>	13 <sup>bb</sup>	37 <sup>bc</sup>	Yes	2
4. Robb Elementary School massacre	Uvalde, TX	5/24/22	MJ	Yes	21	17	38	315 <sup>bd</sup>	Yes	1 <sup>be</sup>
5. Buffalo supermarket massacre	Buffalo, NY	5/14/22	MJ/VP	Yes	10	3	13	60 <sup>bf</sup>	Yes	1
6. Sacramento County church shooting	Sacramento, CA	2/28/22	MJ	Yes	4	0	4	-	Yes <sup>bg</sup>	1
7. Oxford High School shooting	Oxford, MI	11/30/21	MJ/VP	Yes	4	7	11	30 <sup>bh</sup>	Yes <sup>bi</sup>	1
8. San Jose VTA shooting	San Jose, CA	5/26/21	MJ/VP	Yes	9	0	9	39 <sup>bj</sup>	Yes <sup>bk</sup>	3
9. Canterbury Mobile Home Park shooting	Colorado Springs, CO	5/9/21	WaPo	Yes	6	0	6	17 <sup>bl</sup>	-	1
10. FedEx warehouse shooting	Indianapolis, IN	4/15/21	MJ/VP/WaPo	Yes	8	7	15	-	Yes	2 <sup>bm</sup>
11. Orange office complex shooting	Orange, CA	3/31/21	MJ/VP/WaPo	-	4	1	5	-	-	1
12. Essex Royal Farms shooting	Baltimore County, MD	3/28/21	WaPo	-	4	1	5	-	Yes <sup>bn</sup>	1
13. King Soopers supermarket shooting	Boulder, CO	3/22/21	MJ/VP/WaPo	Yes	10	0	10	-	Yes	2
14. Atlanta massage parlor shootings	Atlanta, GA	3/16/21	MJ/VP/WaPo	Yes	8	1	9	-	Yes <sup>bo</sup>	1
15. Hyde Park shooting	Chicago, IL	1/9/21	WaPo	-	5	2	7	-	-	1
16. Englewood block party shooting	Chicago, IL	7/4/20	WaPo	-	4	4	8	-	-	-
17. Springfield convenience store shooting	Springfield, MO	3/15/20	MJ/VP/WaPo	-	4	2	6	-	Yes <sup>bp</sup>	2
18. Molson Coors shooting	Milwaukee, WI	2/26/20	MJ/VP/WaPo	-	5	0	5	12 <sup>bq</sup>	-	2 <sup>br</sup>

*161 mass shootings in Allen (2020):*

19. Jersey City Kosher Supermarket	Jersey City, NJ	12/10/19	MJ/VP/WaPo	-	4	3	7	-	Yes	5
20. Football-watching party	Fresno, CA	11/17/19	WaPo	-	4	6	10	-	-	2
21. Halloween Party	Orinda, CA	11/1/19	WaPo	-	5	0	5	-	-	1
22. Tequila KC bar	Kansas City, KS	10/6/19	WaPo	-	4	5	9	-	No	2
23. Midland-Odessa Highways	Odessa, TX	8/31/19	MJ/VP/WaPo	-	7	25	32	-	No	1
24. Dayton	Dayton, OH	8/4/19	MJ/VP/WaPo	Yes	9	27	36	41 <sup>f</sup>	Yes	1/2
25. El Paso Walmart	El Paso, TX	8/3/19	MJ/VP/WaPo	Yes	22	26	48	-	Yes	1

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
26. Casa Grande Senior Mobile Estates	Santa Maria, CA	6/19/19	WaPo	-	4	0	4	-	-	1
27. Virginia Beach Municipal Center	Virginia Beach, VA	5/31/19	MJ/VP/WaPo	Yes	12	4	16	-	Yes	2
28. Henry Pratt Co.	Aurora, IL	2/15/19	MJ/VP/WaPo	-	5	6	11	-	No	1
29. SunTrust Bank	Sebring, FL	1/23/19	MJ/VP/WaPo	-	5	0	5	-	Yes	1
30. Borderline Bar & Grill	Thousand Oaks, CA	11/7/18	MJ/VP/WaPo	Yes	12	1	13	50 <sup>g</sup>	Yes	1
31. Tree of Life Synagogue	Pittsburgh, PA	10/27/18	MJ/VP/WaPo	-	11	6	17	-	Yes	4
32. T&T Trucking	Bakersfield, CA	9/12/18	MJ/VP/WaPo	No	5	0	5	-	-	1
33. Capital Gazette	Annapolis, MD	6/28/18	MJ/VP/WaPo	-	5	2	7	-	Yes	1
34. Santa Fe High School	Santa Fe, TX	5/18/18	MJ/VP/WaPo	No	10	13	23	-	-	2
35. Waffle House	Nashville, TN	4/22/18	MJ/VP/WaPo	-	4	4	8	-	Yes	1
36. Detroit	Detroit, MI	2/26/18	VP	-	4	0	4	-	-	-
37. Stoneman Douglas HS	Parkland, FL	2/14/18	CC/MJ/VP/WaPo	Yes	17	17	34	-	Yes	1
38. Pennsylvania Carwash	Melcroft, PA	1/28/18	MJ/VP/WaPo	-	4	1	5	-	-	3 h
39. Rancho Tehama	Rancho Tehama, CA	11/14/17	MJ/VP/WaPo	Yes	4	10	14	30 <sup>i</sup>	No	2
40. Texas First Baptist Church	Sutherland Springs, TX	11/5/17	CC/MJ/VP/WaPo	Yes	26	20	46	450 <sup>j</sup>	Yes	1
41. Las Vegas Strip	Las Vegas, NV	10/1/17	CC/MJ/VP/WaPo	Yes	58	422	480	1100 <sup>k</sup>	Yes	23
42. Taos and Rio Arriba counties	Abiquiu, NM	6/15/17	WaPo	No	5	0	5	-	-	1
43. Fiamma Workplace	Orlando, FL	6/5/17	CC/MJ/VP/WaPo	No	5	0	5	-	-	1
44. Marathon Savings Bank	Rothschild, WI	3/22/17	VP/WaPo	-	4	0	4	-	-	2
45. Club 66	Yazoo City, MS	2/6/17	VP/WaPo	-	4	0	4	-	-	1
46. Fort Lauderdale Airport	Fort Lauderdale, FL	1/6/17	CC/MJ/VP/WaPo	No	5	6	11	15 <sup>l</sup>	Yes	1
47. Cascade Mall	Burlington, WA	9/23/16	CC/MJ/VP/WaPo	Yes	5	0	5	-	-	1
48. Dallas Police	Dallas, TX	7/7/16	CC/MJ/VP/WaPo	Yes	5	11	16	-	Yes	3
49. Walgreens Parking Lot	Las Vegas, NV	6/29/16	WaPo	-	4	0	4	-	-	1
50. Orlando Nightclub	Orlando, FL	6/12/16	CC/MJ/VP/WaPo	Yes	49	53	102	110 <sup>m</sup>	Yes	2
51. Franklin Avenue Cookout	Wilkinsburg, PA	3/9/16	VP/WaPo	Yes	6	3	9	48 <sup>n</sup>	No	2
52. Kalamazoo	Kalamazoo County, MI	2/20/16	MJ/VP/WaPo	Yes	6	2	8	-	Yes	1
53. San Bernardino	San Bernardino, CA	12/2/15	CC/MJ/VP/WaPo	Yes	14	22	36	150 <sup>o</sup>	Yes	4

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
54. Tennessee Colony campsite	Anderson County, TX	11/15/15	VP/WaPo	-	6	0	6	-	-	1
55. Umpqua Community College	Roseburg, OR	10/1/15	CC/MJ/VP/WaPo	-	9	9	18	-	Yes	6
56. Chattanooga Military Center	Chattanooga, TN	7/16/15	CC/MJ/VP/WaPo	Yes	5	2	7	-	Yes	3
57. Charleston Church	Charleston, SC	6/17/15	CC/MJ/VP/WaPo	Yes	9	3	12	-	Yes	1
58. Marysville High School	Marysville, WA	10/24/14	CC/MJ/VP/WaPo	Yes	4	1	5	-	No	1
59. Isla Vista	Santa Barbara, CA	5/23/14	MJ/VP/WaPo	No	6	13	19	50 <sup>p</sup>	Yes	3
60. Alturas Tribal	Alturas, CA	2/20/14	MJ/VP/WaPo	-	4	2	6	-	-	2
61. Washington Navy Yard	Washington, D.C.	9/16/13	CC/MJ/VP/WaPo	No	12	8	20	-	Yes	2
62. Hialeah	Hialeah, FL	7/26/13	CC/MJ/VP/WaPo	Yes	6	0	6	10 <sup>q</sup>	Yes	1
63. Santa Monica	Santa Monica, CA	6/7/13	CC/MJ/VP/WaPo	Yes	5	3	8	70 <sup>r</sup>	Yes	2
64. Federal Way	Federal Way, WA	4/21/13	MJ/VP/WaPo	-	4	0	4	-	Yes	2
65. Upstate New York	Herkimer County, NY	3/13/13	MJ/VP/WaPo	-	4	2	6	-	Yes	1
66. Newtown School	Newtown, CT	12/14/12	CC/MJ/VP/WaPo	Yes	27	2	29	154	No	4/3
67. Accent Signage Systems	Minneapolis, MN	9/27/12	CC/MJ/VP/WaPo	Yes	6	2	8	46	Yes	1
68. Sikh Temple	Oak Creek, WI	8/5/12	CC/MJ/VP/WaPo	Yes	6	4	10	-	Yes	1
69. Aurora Movie Theater	Aurora, CO	7/20/12	CC/MJ/VP/WaPo	Yes	12	70	82	80	Yes	4
70. Seattle Café	Seattle, WA	5/30/12	CC/MJ/VP/WaPo	No	5	1	6	-	Yes	2
71. Oikos University	Oakland, CA	4/2/12	CC/MJ/VP/WaPo	No	7	3	10	-	Yes	1
72. Su Jung Health Sauna	Norcross, GA	2/22/12	MJ/WaPo	-	4	0	4	-	Yes	1
73. Seal Beach	Seal Beach, CA	10/14/11	CC/MJ/VP/WaPo	No	8	1	9	-	Yes	3
74. IHOP	Carson City, NV	9/6/11	CC/MJ/VP/WaPo	Yes	4	7	11	-	Yes	3
75. Akron	Akron, OH	8/7/11	VP	No	7	2	9	21 <sup>s</sup>	-	-
76. Forum Roller World	Grand Prairie, TX	7/23/11	WaPo	-	5	4	9	-	-	1
77. Grand Rapids	Grand Rapids, MI	7/7/11	CC	Yes	7	2	9	10	-	1
78. Family law practice	Yuma, AZ	6/2/11	WaPo	-	5	1	6	-	-	1
79. Tucson	Tucson, AZ	1/8/11	CC/MJ/VP/WaPo	Yes	6	13	19	33	Yes	1
80. Jackson	Jackson, KY	9/11/10	VP	No	5	0	5	12 <sup>t</sup>	-	-
81. City Grill	Buffalo, NY	8/14/10	VP/WaPo	-	4	4	8	10 <sup>u</sup>	-	1

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
82. Hartford Beer Distributor	Manchester, CT	8/3/10	CC/MJ/VP/WaPo	Yes	8	2	10	11	Yes	2
83. Yoyito Café	Hialeah, FL	6/6/10	CC/VP/WaPo	No	4	3	7	9 <sup>v</sup>	-	-
84. Hot Spot Café	Los Angeles, CA	4/3/10	VP/WaPo	-	4	2	6	50 <sup>w</sup>	-	1
85. Coffee Shop Police	Parkland, WA	11/29/09	CC/MJ/VP/WaPo	No	4	0	4	-	No	2
86. Fort Hood	Fort Hood, TX	11/5/09	CC/MJ/VP/WaPo	Yes	13	32	45	214	Yes	1
87. Worth Street	Mount Airy, NC	11/1/09	VP/WaPo	-	4	0	4	16 <sup>x</sup>	No	1
88. Binghamton	Binghamton, NY	4/3/09	CC/MJ/VP/WaPo	Yes	13	4	17	99	Yes	2
89. Carthage Nursing Home	Carthage, NC	3/29/09	CC/MJ/VP/WaPo	No	8	2	10	-	Yes	2
90. Skagit County	Alger, WA	9/2/08	VP/WaPo	-	6	4	10	-	No	2
91. Atlantis Plastics	Henderson, KY	6/25/08	CC/MJ/VP/WaPo	No	5	1	6	-	Yes	1
92. Black Road Auto	Santa Maria, CA	3/18/08	VP/WaPo	-	4	0	4	17 <sup>y</sup>	-	1
93. Northern Illinois University	DeKalb, IL	2/14/08	CC/MJ/VP/WaPo	Yes	5	21	26	54	Yes	4
94. Kirkwood City Council	Kirkwood, MO	2/7/08	CC/MJ/VP/WaPo	No	6	1	7	-	No	2
95. Youth With a Mission and New Life Church	Colorado Springs, CO	12/9/07	VP/WaPo	Yes	4	5	9	25 <sup>z</sup>	-	3
96. Westroads Mall	Omaha, NE	12/5/07	CC/MJ/VP/WaPo	Yes	8	5	13	14	No	1
97. Crandon	Crandon, WI	10/7/07	CC/MJ/WaPo	Yes	6	1	7	30 <sup>aa</sup>	Yes	1
98. Virginia Tech	Blacksburg, VA	4/16/07	CC/MJ/VP/WaPo	Yes	32	17	49	176	Yes	2
99. Trolley Square	Salt Lake City, UT	2/12/07	CC/MJ/VP/WaPo	No	5	4	9	-	No	2
100. Amish School	Lancaster County, PA	10/2/06	CC/MJ/VP/WaPo	No	5	5	10	-	Yes	3
101. The Ministry of Jesus Christ	Baton Rouge, LA	5/21/06	VP/WaPo	-	5	1	6	-	-	1
102. Capitol Hill	Seattle, WA	3/25/06	CC/MJ/VP/WaPo	Yes	6	2	8	-	Yes	4
103. Goleta Postal	Goleta, CA	1/30/06	CC/MJ/VP/WaPo	Yes	7	0	7	-	Yes	1
104. Sash Assembly of God	Sash, TX	8/29/05	VP/WaPo	-	4	0	4	-	-	2
105. Red Lake	Red Lake, MN	3/21/05	CC/MJ/VP/WaPo	No	9	7	16	-	No	3
106. Living Church of God	Brookfield, WI	3/12/05	CC/MJ/VP/WaPo	Yes	7	4	11	-	Yes	1
107. Fulton County Courthouse	Atlanta, GA	3/11/05	VP/WaPo	-	4	0	4	-	No	1
108. Damageplan Show	Columbus, OH	12/8/04	CC/MJ/VP/WaPo	No	4	3	7	15 <sup>ab</sup>	Yes	1
109. Hunting Camp	Meteor, WI	11/21/04	CC/VP/WaPo	Yes	6	2	8	20	-	1

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
110. ConAgra Foods Plant	Kansas City, KS	7/3/04	VP/WaPo	-	6	1	7	10 <sup>ac</sup>	-	2
111. Stateline Tavern	Oldtown, ID	10/24/03	VP/WaPo	Yes	4	0	4	14 <sup>ad</sup>	-	1
112. Windy City Warehouse	Chicago, IL	8/27/03	CC/VP/WaPo	No	6	0	6	-	-	-
113. Lockheed Martin	Meridian, MS	7/8/03	CC/MJ/VP/WaPo	-	6	8	14	-	Yes	5
114. Labor Ready	Huntsville, AL	2/25/03	VP/WaPo	-	4	1	5	-	-	1
115. Bertrand Products	South Bend, IN	3/22/02	VP/WaPo	-	4	2	6	-	-	2
116. Burns International Security	Sacramento, CA	9/10/01	VP/WaPo	Yes	5	2	7	200 <sup>ac</sup>	-	2
117. Bookcliff RV Park	Rifle, CO	7/3/01	VP/WaPo	No	4	3	7	6 <sup>af</sup>	-	1
118. Navistar	Melrose Park, IL	2/5/01	CC/MJ/VP/WaPo	Yes	4	4	8	-	Yes	4
119. Houston	Houston, TX	1/9/01	VP	-	4	0	4	-	-	-
120. Wakefield	Wakefield, MA	12/26/00	CC/MJ/VP/WaPo	Yes	7	0	7	37	Yes	3
121. Mount Lebanon	Pittsburgh, PA	4/28/00	VP/WaPo	No	5	1	6	-	Yes	1
122. Mi-T-Fine Car Wash	Irving, TX	3/20/00	VP/WaPo	-	5	1	6	-	-	-
123. Hotel	Tampa, FL	12/30/99	CC/MJ/VP/WaPo	No	5	3	8	-	Yes	2
124. Xerox	Honolulu, HI	11/2/99	CC/MJ/VP/WaPo	Yes	7	0	7	28	Yes	1
125. Wedgwood Baptist Church	Fort Worth, TX	9/15/99	CC/MJ/VP/WaPo	Yes	7	7	14	30	Yes	2
126. Atlanta Day Trading	Atlanta, GA	7/29/99	MJ/VP/WaPo	-	9	13	22	-	Yes	4
127. Albertson's Supermarket	Las Vegas, NV	6/3/99	VP/WaPo	-	4	1	5	-	-	1
128. Columbine High School	Littleton, CO	4/20/99	CC/MJ/VP/WaPo	Yes	13	23	36	188	No	4
129. New St. John Fellowship Baptist Church	Gonzalez, LA	3/10/99	VP/WaPo	-	4	4	8	-	-	1
130. Thurston High School	Springfield, OR	5/21/98	CC/MJ/VP/WaPo	Yes	4	25	29	50	No	3
131. Westside Middle School	Jonesboro, AR	3/24/98	CC/MJ/VP/WaPo	Yes	5	10	15	26	No	9/10
132. Connecticut Lottery	Newington, CT	3/6/98	CC/MJ/VP/WaPo	Yes	4	0	4	5	Yes	1
133. Caltrans Maintenance Yard	Orange, CA	12/18/97	CC/MJ/VP/WaPo	Yes	4	2	6	144	Yes	1
134. Erie Manufacturing	Bartow, FL	12/3/97	VP	-	4	0	4	12 <sup>ag</sup>	-	-
135. R.E. Phelon Company	Aiken, SC	9/15/97	CC/MJ/VP/WaPo	No	4	3	7	-	No	1
136. News and Sentinel	Colebrook, NH	8/20/97	VP/WaPo	-	4	4	8	-	-	2
137. Fire Station	Jackson, MS	4/25/96	VP/WaPo	-	5	3	8	-	-	3

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
138. Fort Lauderdale	Fort Lauderdale, FL	2/9/96	CC/MJ/VP/WaPo	No	5	1	6	14 <sup>ah</sup>	Yes	2
139. Little Chester Shoes	New York, NY	12/19/95	VP/WaPo	Yes	5	3	8	-	-	1
140. Piper Technical Center	Los Angeles, CA	7/19/95	CC/VP/WaPo	Yes	4	0	4	-	-	-
141. Walter Rossler Company	Corpus Christi, TX	4/3/95	CC/MJ/VP/WaPo	No	5	0	5	-	Yes	2
142. Puppy creek	Hoke County, NC	12/31/94	VP	-	5	1	6	-	-	-
143. Air Force Base	Fairchild Base, WA	6/20/94	CC/MJ/VP/WaPo	Yes	4	23	27	50 <sup>ai</sup>	Yes	1
144. Chuck E. Cheese	Aurora, CO	12/14/93	CC/MJ/VP/WaPo	No	4	1	5	-	-	1
145. Long Island Railroad	Garden City, NY	12/7/93	CC/MJ/VP/WaPo	Yes	6	19	25	30	Yes	1
146. Unemployment Office	Oxnard, CA	12/2/93	VP/WaPo	-	4	4	8	-	-	-
147. Family Fitness Club	El Cajon, CA	10/14/93	VP/WaPo	-	4	0	4	-	Yes	1
148. Luigi's Restaurant	Fayetteville, NC	8/6/93	CC/MJ/VP/WaPo	No	4	8	12	-	Yes	3
149. Washington County Bar	Jackson, MS	7/8/93	WaPo	-	5	0	5	-	-	1
150. 101 California Street	San Francisco, CA	7/1/93	CC/MJ/VP/WaPo	Yes	8	6	14	75	No	3
151. Card club	Paso Robles, CA	11/8/92	VP/WaPo	-	6	1	7	-	-	1
152. Watkins Glen	Watkins Glen, NY	10/15/92	CC/MJ/VP/WaPo	No	4	0	4	-	Yes	1
153. Lindhurst High School	Olivehurst, CA	5/1/92	CC/MJ/VP/WaPo	No	4	10	14	-	Yes	2
154. Phoenix	Phoenix, AZ	3/15/92	VP	-	4	0	4	-	-	-
155. Royal Oak Postal	Royal Oak, MI	11/14/91	CC/MJ/VP/WaPo	Yes	4	4	8	-	Yes	1
156. Restaurant	Harrodsburg, KY	11/10/91	VP/WaPo	No	4	0	4	6 <sup>aj</sup>	No	1
157. University of Iowa	Iowa City, IA	11/1/91	CC/MJ/VP/WaPo	No	5	1	6	-	Yes	1
158. Luby's Cafeteria	Killeen, TX	10/16/91	CC/MJ/VP/WaPo	Yes	23	20	43	100	Yes	2
159. Post office	Ridgewood, NJ	10/10/91	VP/WaPo	Yes	4	0	4	-	-	2
160. GMAC	Jacksonville, FL	6/18/90	CC/MJ/VP/WaPo	Yes	9	4	13	14	Yes	2
161. Standard Gravure Corporation	Louisville, KY	9/14/89	CC/MJ/VP/WaPo	Yes	8	12	20	21	Yes	5
162. Stockton Schoolyard	Stockton, CA	1/17/89	CC/MJ/VP/WaPo	Yes	5	29	34	106	Yes	2
163. Montefiore School	Chicago, IL	9/22/88	VP/WaPo	No	4	2	6	-	-	1
164. Old Salisbury Road	Winston-Salem, NC	7/17/88	VP/WaPo	-	4	5	9	-	-	1
165. ESL	Sunnyvale, CA	2/16/88	CC/MJ/VP/WaPo	No	7	4	11	-	Yes	7

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Case	Location	Date	Source	Large Capacity Mag.? <sup>a</sup>	Fatalities <sup>b</sup>	Injuries <sup>c</sup>	Total Fatalities & Injuries <sup>c</sup>	Shots Fired <sup>d</sup>	Gun(s) Obtained Legally? <sup>c</sup>	Offender(s) Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
166. Shopping Centers	Palm Bay, FL	4/23/87	CC/MJ/VP/WaPo	Yes	6	14	20	40 <sup>ak</sup>	Yes	3
167. United States Postal Service	Edmond, OK	8/20/86	CC/MJ/VP/WaPo	No	14	6	20	-	Yes	3
168. Anchor Glass Container Corporation	South Connellsville, PA	3/16/85	VP/WaPo	No	4	1	5	-	-	1
169. Other Place Lounge	Hot Springs, AR	7/24/84	VP/WaPo	No	4	1	5	-	-	1
170. San Ysidro McDonald's	San Ysidro, CA	7/18/84	CC/MJ/VP/WaPo	Yes	21	19	40	257	Yes	3
171. Dallas Nightclub	Dallas, TX	6/29/84	CC/MJ/VP/WaPo	Yes	6	1	7	-	No	1
172. Alaska Mining Town	Manley Hot Springs, AK	5/17/84	VP/WaPo	No	7	0	7	-	-	1
173. College Station	College Station, TX	10/11/83	VP	-	6	0	6	-	-	-
174. Alaska Back-County	McCarthy, AK	3/1/83	VP/WaPo	-	6	2	8	-	-	2
175. Upper West Side Hotel	New York, NY	2/3/83	VP	No	4	1	5	-	-	1
176. The Investor	Noyes Island, AK	9/6/82	WaPo	-	8	0	8	-	-	1
177. Welding Shop	Miami, FL	8/20/82	MJ/VP/WaPo	No	8	3	11	-	Yes	1
178. Western Transfer Co.	Grand Prairie, TX	8/9/82	VP/WaPo	-	6	4	10	-	-	3
179. Russian Jack Springs Park	Anchorage, AK	5/3/82	VP/WaPo	-	4	0	4	-	No	1
LCM Avg. (1982-2019):					10	17	27	103		
Non-LCM Avg. (1982-2019):					6	3	9	16		
LCM Avg. (1982-Oct. 2022):					10	16	25	102		
Non-LCM Avg. (1982-Oct. 2022):					6	3	9	16		

**Notes and Sources:**

Public Mass Shootings from Mother Jones ("US Mass Shootings, 1982-2022: Data from Mother Jones' Investigation," updated October 14, 2022). MJ indicates a mass shooting identified by Mother Jones.

The Citizens Crime Commission of New York City ("Mayhem Multiplied: Mass Shooters and Assault Weapons," February 2018 update, and "Citizens Crime Commission of New York City, Mass Shooting Incidents in America (1984-2012)," accessed June 1, 2017). CC indicates a mass shooting identified by Citizens Crime Commission of New York City data.

The Washington Post ("The Terrible Numbers That Grow With Each Mass Shooting," updated May 12, 2021). WaPo indicates a mass shooting identified by The Washington Post.

The Violence Project ("Mass Shooter Database," updated May 14, 2022). VP indicates a mass shooting identified by the Violence Project.

<sup>a</sup> Large capacity magazines are those with a capacity to hold more than 10 rounds of ammunition. Stories from Factiva and Google searches reviewed to determine whether an LCM was involved.

<sup>b</sup> Offender(s) are not included in counts of fatalities and injuries. Stories from Factiva and Google searches reviewed to determine number of fatalities and injuries.

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Case	Location	Date	Source	Large Capacity Mag. <sup>a</sup>	Fatalities <sup>b</sup>	Injuries <sup>c</sup>	Total Fatalities & Injuries <sup>c</sup>	Shots Fired <sup>d</sup>	Gun(s) Obtained Legally? <sup>e</sup>	Offender(s) Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

<sup>c</sup> Offender(s) are not included in counts of fatalities and injuries. Stories from Factiva and Google searches reviewed to determine number of fatalities and injuries.

<sup>d</sup> Except where noted, all data on shots fired obtained from CC.

<sup>e</sup> The determination of whether guns were obtained legally is based on Mother Jones and Washington Post reporting.

<sup>ba</sup> "This is the norm in our country": Highland Park Mayor speaks to Senate committee about gun violence," *CBS Chicago*, July 20, 2022.

<sup>bb</sup> MJ reported "fewer than 10" injuries for this incident.

<sup>bc</sup> "Update: Man among those killed held door to allow others to escape, Tulsa police chief says," *TulsaWorld*, June 2, 2022.

<sup>bd</sup> "The gunman in Uvalde carried more ammunition into Robb Elementary School than a U.S. soldier carries into combat," *CBS News*, May 27, 2022.

<sup>be</sup> "Uvalde gunman legally bought AR rifles days before shooting, law enforcement says," *The Texas Tribune*, May 25, 2022.

<sup>bf</sup> "Buffalo shooting suspect says his motive was to prevent 'eliminating the white race'," *NPR*, June 16, 2022.

<sup>bg</sup> "Sacramento Church Mass Shooting Follows Disturbing Trend of Domestic Violence, Mass Shooting Connection; Rise of Ghost Guns," *Everytown*, March 7, 2022.

<sup>bh</sup> "Oxford High School shooter fired 30 rounds, had 18 more when arrested, sheriff says," *Fox2Detroit*, December 1, 2021.

<sup>bi</sup> "Father of suspected Oxford High School shooter bought gun 4 days before shooting," *Fox 2 Detroit*, December 1, 2021.

<sup>bj</sup> "VTA shooter fired 39 rounds during attack; carried 32 high-capacity magazines," *KTVU Fox 2*, May 27, 2021.

<sup>bk</sup> "Sam Cassidy legally owned guns used in San Jose VTA shooting: Sheriff," *Kron4*, May 28, 2021.

<sup>bl</sup> "Colorado Springs shooter who killed 6 at party had "displayed power and control issues," police say," *The Denver Post*, May 11, 2021.

<sup>bm</sup> "Indianapolis FedEx Shooter Who Killed 4 Sikhs Was Not Racially Motivated, Police Say," *NPR*, July 28, 2021.

<sup>bn</sup> "Police Investigate Three Separate Fatal Shooting Incidents In Baltimore County," *Baltimore County Government Website*, March 29, 2021.

<sup>bo</sup> "Atlanta Shooting Suspect Bought Gun on Day of Rampage," *Courthouse News*, March 26, 2021.

<sup>bp</sup> "Search warrant reveals new information in Springfield Kum & Go shooting," *Springfield News-Leader*, April 8, 2020.

<sup>bq</sup> "There was no warning this was going to happen," Miller shooting witnesses told investigators," *WISN 12 News*, November 24, 2020.

<sup>br</sup> "Milwaukee Miller brewery shooting: Six Molson Coors workers, including shooter, dead in rampage," *Milwaukee Journal Sentinel*, February 26, 2020.

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

<sup>f</sup> "The Dayton gunman killed 9 people by firing 41 shots in 30 seconds. A high-capacity rifle helped enable that speed," *CNN*, August 5, 2019.

<sup>g</sup> "Authorities Describe 'Confusion And Chaos' At Borderline Bar Shooting In California," *NPR*, November 28, 2018.

<sup>h</sup> "Suspect in quadruple killing at car wash dies," *CNN*, January 30, 2018.

<sup>i</sup> "California gunman fired 30 rounds at elementary school, left when he couldn't get inside," *ABC News*, November 15, 2017.

<sup>j</sup> "'Be quiet! It's him!' Survivors say shooter walked pew by pew looking for people to shoot," *CNN*, November 9, 2017.

<sup>k</sup> "Sheriff Says More than 1,100 Rounds Fired in Las Vegas," *Las Vegas Review Journal*, November 22, 2017

<sup>l</sup> "Fort Lauderdale Shooting Suspect Appears in Court, Ordered Held Without Bond," *Washington Post*, January 9, 2017.

<sup>m</sup> "We Thought It Was Part of the Music': How the Pulse Nightclub Massacre Unfolded in Orlando," *The Telegraph*, June 13, 2016.

<sup>n</sup> "Two men charged with homicide in connection with Wilksburg backyard ambush," *Pittsburgh's Action News*, June 24, 2016.

<sup>o</sup> "San Bernardino Suspects Left Trail of Clues, but No Clear Motive," *New York Times*, December 3, 2015.

<sup>p</sup> "Sheriff: Elliot Rodger Fired 50-plus Times in Isle Vista Rampage," *Los Angeles Times*, June 4, 2014.

<sup>q</sup> "Shooter Set \$10,000 on Fire in Hialeah Shooting Rampage," *NBC News*, July 28, 2013.

<sup>r</sup> "Police Call Santa Monica Gunman 'Ready for Battle,'" *New York Times*, June 8, 2013.

<sup>s</sup> "Questions linger in slayings; investigation continues in rampage as community searches for answers on why gunman shot eight people," *The Beacon Journal*, August 14, 2011.

<sup>t</sup> "Kentucky Tragedy: Man Kills Wife, Five Others, in Rampage Over Cold Eggs, Say Cops," *CBS News*, September 13, 2010.

<sup>u</sup> "Ex-gang member guilty of shooting 5 in deadly 17-second rampage," *NBC*, April 1, 2011.

<sup>v</sup> "Hialeah Gunman's Rage Over Estranged Wife Leaved 5 Dead," *Sun-Sentinel*, June 7, 2010.

<sup>w</sup> "Man convicted of killing 4 at Los Angeles restaurant," *Associated Press*, March 15, 2016.

<sup>x</sup> "4 Victims In Mount Airy Shooting Related, Police Say," *WXII 12 News*, November 2, 2009.

<sup>y</sup> "Arrested suspect might have warned of Santa Maria shooting," *Associated Press*, March 20, 2008.

<sup>z</sup> "Profile: New information released on Matthew Murray, gunman in church-related shootings in Colorado; Larry Bourbannais, wounded in one of the shootings, discusses his experience," *NBC News*, December 11



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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

<sup>aa</sup> "Small Town Grieves for 6, and the Killer," *Los Angeles Times* , October 9, 2007.

<sup>ab</sup> "National Briefing | Midwest: Ohio: Shooter At Club May Have Reloaded," *New York Times* , January 15, 2005.

<sup>ac</sup> "Sixth person dies of injuries from shooting at Kansas meatpacking plant," *Associated Press* , July 3, 2004.

<sup>ad</sup> "Four Killed In Oldtown Shooting," *The Miner* , October 30, 2003.

<sup>ae</sup> "Sacramento shooter unscathed before killing self, autopsy shows," *Associated Press* , September 14, 2001.

<sup>af</sup> "Gunman kills 3, wounds 4 in Rifle rampage; mental patient is arrested," *The Denver Post* , April 2, 2015.

<sup>ag</sup> "Unfinished business," *Dateline NBC* , December 21, 2006.

<sup>ah</sup> "5 Beach Workers in Florida are Slain by Ex-Colleague," *New York Times* , February 10, 1996.

<sup>ai</sup> "Man Bent On Revenge Kills 4, Hurts 23 -- Psychiatrist Is First Slain In Rampage At Fairchild Air Force Base," *The Seattle Times* , June 21, 1994.

<sup>aj</sup> "Man Killed Estranged Wife, Three Others as They Drove to Dinner," *Associated Press* , November 11, 1991.

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## **EXHIBIT 6**

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8 *official capacity as Attorney General of the*  
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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION

12  
13 **VIRGINIA DUNCAN, RICHARD**  
**LEWIS, PATRICK LOVETTE,**  
14 **DAVID MARGUGLIO,**  
**CHRISTOPHER WADDELL, and**  
15 **CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
16 **corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 17-cv-1017-BEN-JLB

**DECLARATION OF DENNIS**  
**BARON**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

**DECLARATION OF DENNIS BARON**

I, Dennis Baron, declare under penalty of perjury that the following is true and correct:

1. I have been retained by the State of California to provide expert opinion and testimony regarding Corpus Linguistics research. I am being compensated at a rate of \$350 per hour.

2. I have evaluated the historical use of the terms *arms* and *accoutrements* in order to show that large-capacity magazines (henceforth, LCMs), along with magazines in general, ammunition cases, cartridge cases or boxes, and other ammunition storage containers or devices are not *arms* but are part of the category known as *accoutrements* from the Founding Era through the period following the ratification of the Fourteenth Amendment.

**BACKGROUND AND QUALIFICATIONS**

3. I am a resident of Champaign, Illinois, and I am currently Professor Emeritus and Research Professor at the University of Illinois, where I have served as a member of both the Department of English and the Department of Linguistics since 1975. I served as Head of the Department of English for six years and before that as Director of Rhetoric at the university for 11 years. I earned my Ph.D. in English language and literature from the University of Michigan in 1971, with a dissertation on historical aspects of the English language from Old English to Present-Day English, and I continue to publish widely on matters of historical language use, and on topics related to language and law. I am a life member of the Linguistic Society of America, the American Dialect Society, and the Modern Language Association, as well as a member of the National Council of Teachers of English. I have held a Fulbright Fellowship (to France), a National Endowment for the Humanities Fellowship, for work on a book on language and law, and, most recently, a Guggenheim Fellowship, for work on my latest book on language and

1 law. I have also published books on language reform, on usage, and on gender in  
2 language.

3 4. Most relevant for this report, I published two books on language and  
4 law: *The English-Only Question: An Official Language for Americans?* (Yale Univ.  
5 Press, 1990) and *You Can't Always Say What You Want: The Paradox of Free*  
6 *Speech* (Cambridge Univ. Press, January 2023). In addition, I served as lead author  
7 on what came to be called "the Linguists Brief" in *District of Columbia v. Heller*  
8 (2008), a brief cited both by J. Scalia in his opinion in the case, and by J. Stevens in  
9 his dissent. I was a co-author on another brief by professors of linguistics and  
10 corpus linguistics, in *New York State Rifle and Pistol Ass'n. v. Bruen* (No. 20-843,  
11 2022), which J. Breyer cited in his dissent. In that dissent, J. Breyer also quoted  
12 directly from my essay "Corpus evidence and the meaning of 'bear arms'"  
13 (*Hastings Constitutional Law Quarterly*, 46.3: 2019). I have spoken about historical  
14 meaning and the Second Amendment at the Federalist Society at the Univ. of  
15 Chicago Law School, at the Neubauer Symposium on Historical Semantics at the  
16 Univ. of Chicago, at Brigham Young Univ. Law School, at Stanford University,  
17 and at the conference "*Heller* after Ten Years" at Hastings College of Law. I've  
18 also written opinion essays on historical meaning and the Second Amendment for  
19 the *Washington Post* and the *Los Angeles Times*. And I have submitted a  
20 declaration on behalf of the State of Rhode Island in *Ocean State Tactical, LLC, et*  
21 *al. v. State of Rhode Island* (Case No. 1:22-cv-00246-JJM-PAS) (D. R.I.). In the  
22 past twenty years I have been an expert consultant in perhaps a dozen cases  
23 involving document interpretation.

24 5. My forthcoming essay, "Look It Up in Your *Funk and Wagnalls*: How  
25 Courts Define the Words of the Law," an analysis of how courts incorporate  
26 information from dictionaries and digitized corpora as they ascertain legal meaning,  
27 will appear in the next issue of the academic journal of the Dictionary Society of  
28 North America, *Dictionaries*.

## OPINIONS

8. Militia regulations in the Founding Era often specified the types of arms required for officers and troops (for example, pistols and/or swords for the officers; rifles for the lower ranks). And they often specified, separately, the

1 different accessories that officers and the rank and file soldiers were also required  
2 to have.

## 3 **II. THEORY AND METHODOLOGY**

4 9. Corpus linguistics as a field developed in the late 1960s, when scholars  
5 began using computer programs to analyze large bodies of digitized text. Initial  
6 work in corpus linguistics did not typically involve legal issues. Literary scholars  
7 developed computerized concordances to the works of Shakespeare, Milton, and  
8 other major English writers. Scholars plotted the frequency of words and phrases in  
9 order to develop a picture of an author's style, and to determine authorship of a  
10 particular work when the provenance was in doubt. Soon, in addition to solving  
11 literary mysteries, the methodologies developed by corpus linguists were  
12 successfully applied in a number of criminal cases in the US and in England  
13 involving, for example, the authorship of a ransom note or an email.

14 10. Lexicographers, who began compiling large analog databases of text in  
15 the late 19th century, began to digitize their libraries of paper data and to add to that  
16 material, assembling computerized databases of historical and contemporary text  
17 and, more recently, of spoken language as well, in order to arrive at more precise  
18 definitions of the multiple senses of words and phrases.

19 11. As a graduate student at the Univ. of Michigan in 1970, I coded analog  
20 texts from the *Oxford English Dictionary* files to help build the computerized  
21 database for the Dictionary of Early Modern English, the period from 1500–1800  
22 that is particularly relevant to the language of the Founding Era. Today, major  
23 dictionaries like the *Oxford English Dictionary* and the Merriam-Webster suite of  
24 dictionaries rely on public databases of oral and written language, as well as their  
25 own proprietary databases, in order to revise older definitions and to track the  
26 spread of new words and meanings. The great dictionary makers of Europe use  
27 similar databases in their own work.



1           12. Over the past twenty years, Legal Corpus Linguistics (LCL) has  
2 developed as a subset of Corpus Linguistics. LCL involves the analysis of digitized  
3 corpora of current and historical English to establish meaning—often referred to as  
4 Original Public Meaning (OPM)—in statutes and in the Constitution. The promise  
5 of LCL attracted jurists as well as scholars with a specific interest in language and  
6 law. In *Muscarello v. United States* (524 US 125 1998), a case which held that “a  
7 person who knowingly possesses and conveys firearms in a vehicle, including in its  
8 glove compartment or truck, can be deemed to be within the scope of the statutory  
9 phrase ‘carries a firearm,’” J. Breyer searched two computerized newspaper  
10 databases (Lexis/Nexis for the *New York Times* and Westlaw, for “US News”) to  
11 clarify the meaning of the words *carry*, *vehicle*, and *weapon*. In her dissent, J.  
12 Ginsburg expressed skepticism that either dictionary evidence, or Breyer’s  
13 innovative newspaper searches, were useful in determining what Congress intended  
14 by the verb *carry* in the law in question. Her critique did not deter courts from  
15 performing other computerized data searches to determine legal meaning. In 2012,  
16 Judge Richard Posner, then Chief Judge of the Seventh Circuit, was perhaps the  
17 first jurist to use a general internet search in order to determine a word’s meaning in  
18 a statute. Not satisfied with the dictionary definition that the government relied on  
19 in the case before him, Posner ran a Google search to confirm that the word *harbor*  
20 in the Immigration Act of 1917 does not mean ‘shelter,’ as the government claimed,  
21 but rather ‘hide, conceal from view,’ as he felt it must mean in the context of the  
22 statute (*United States v. Costello*, 2012). Subsequent research by trained corpus  
23 linguists pointed out that a more-structured internet search revealed that *harbor* can  
24 indeed mean ‘provide shelter’ as well as the narrower sense, ‘hide someone from  
25 the authorities.’ But in the context of the Immigration Act, *harbor* appears  
26 alongside other terms involving secret, illegal activity, and so even though, using  
27 more rigorous parameter’s showed that Posner’s Google search may have been  
28 flawed, his understanding of the word *in context* seems clearly to be correct.

1           13. More principled, scientific database searches soon followed, and in 2018  
2 Judge Thomas Lee, of the Utah Supreme Court, a long-time champion of corpus  
3 linguistics, together with the legal scholar Stephen Mouritsen, published “Judging  
4 Ordinary Meaning” (*Yale Law Journal* 127), summarizing the latest research in  
5 corpus linguistics and championing LCL as a way to determine ordinary meaning,  
6 and more specifically, OPM, with more clarity. Jurists over the past few years have  
7 found that in several cases, LCL proves more useful than the period dictionaries  
8 (for example, the dictionaries of Samuel Johnson and Noah Webster) that courts  
9 have often relied on to determine historical meaning. LCL often supplements the  
10 historical interpretations found in older dictionaries and in the *Oxford English*  
11 *Dictionary*, as well, allowing a more precise interpretation of historical text data.

12           14. In addition to the publication of several significant law review articles by  
13 experts in the field of corpus linguistics, there have been several conferences on  
14 Legal Corpus Linguistics in the past few years, and a number of continuing-  
15 education seminars on LCL are now offered for judges and lawyers. As a result,  
16 Corpus Linguistics has drawn increased attention from the courts, including recent  
17 mentions in decisions in the Sixth, Seventh, and Ninth Circuits, as well as a  
18 comment by J. Alito in his concurrence in *Facebook v. Duguid* (2021), where he  
19 suggested that LCL may one day provide a useful alternative to the canons of  
20 interpretation. Over the past decade, LCL has become an important tool in helping  
21 to determine original public meaning when such meaning is in doubt.

22           15. Several large databases have come online in the past few years that  
23 facilitate LCL research. They have proved invaluable to me in compiling this  
24 report. Brigham Young University’s Center for Law and Corpus Linguistics  
25 sponsors the Corpus of Founding Era American English (COFEA), with more than  
26 126,000 texts, comprising close to 137 million words, covering the years 1760–  
27 1799. BYU’s Corpus of Early Modern English (COEME), covering the years  
28 1475–1800, contains over 40,000 texts and 1.1 billion words. For the nineteenth

1 century, the Corpus of Historical American English (COHA), which was initially  
2 developed at BYU as well but is now independent of that institution, currently  
3 contains 475 million words of text from 1820–2020. The size of these databases  
4 continues to grow as more works are digitized, coded, and added to the corpora.

5 16. Critics of LCL have complained that databases like COFEA and COEME  
6 contain only texts written by “elites,” whose language may differ from that of  
7 “ordinary people” who do not write at all, or who for various reasons do not write  
8 texts likely to be included in the available corpora. It is certainly the case that many  
9 printed books and periodicals, along with documents like the Constitution, its  
10 amendments, and state and federal statutes, tend to be written by educated  
11 specialists and professional writers, and although ordinary people are expected to  
12 understand the language of the Constitution, the Declaration of Independence, and  
13 other founding documents, as well as the laws that govern the nation, such texts  
14 typically require specialized knowledge. A reading-difficulty formula like the  
15 commonly-used Flesch-Kincaid scale suggests that the Declaration of  
16 Independence and the Constitution require a fifteenth-grade reading level, while  
17 according to one comprehensive study, *Adult Literacy in America* (US Department  
18 of Education, 1993), the average American today tends to have a seventh-grade  
19 reading level.

20 17. In order to counter any “elite” bias that may be found in databases like  
21 COFEA, COEME, and COHA, I rely as well on five digitized newspaper databases  
22 covering the period 1750–1900, focusing for this report on the Founding Era and on  
23 the period of Reconstruction after the passage of the Fourteenth Amendment. Print  
24 technology remained relatively static between the 1450s, when printing presses first  
25 appeared in Europe, and the early 19th century, when the Industrial Revolution  
26 drastically changed print technology. The first printing press was adapted by  
27 Gutenberg from the design of the traditional wine press, and printing was a slow  
28 and labor intensive process. As a result, newspapers in the founding era were small,

1 averaging four to eight pages. Publication was less frequent as well. Papers tended  
2 to appear weekly or semi-weekly, rather than daily. Even so, newspapers in the  
3 Founding Era and later, during Reconstruction, provided average Americans with  
4 their principal access to all the critical events and documents of their time, along  
5 with coverage of local and international news. Even though newspaper subscribers  
6 tended to be “elites,” newspaper content was widely shared by word-of-mouth:  
7 ultimately, most Americans in the Founding Era, including those who would be  
8 classified as illiterate or poorly educated by today’s standards, got their news from  
9 newspapers.

10 18. The invention of the steam engine in the 19th century, along with growth  
11 of paper mills that facilitated the production from wood pulp of large and  
12 inexpensive rolls of newsprint, led to a revolution in print technology. This led to  
13 an explosion in the size of newspapers and the frequency of their publication, to the  
14 point where, at their height, papers in big cities were publishing several editions a  
15 day. This growth in newspapers, along with a substantial increase in periodical and  
16 book production, paralleled a growth in literacy in the US and Europe that tracked  
17 the industrial revolution and the subsequent rise in universal public education. By  
18 the end of the Civil War, there were more readers than ever, and they demanded  
19 more reading material.

20 19. As for the question of “elites,” as the principal means of communicating  
21 news and information, the newspapers of the 18th and 19th centuries embodied  
22 much of the language of the “ordinary people” who read them. Newspapers also  
23 provide researchers with more data for the 19th century than a corpus like COHA,  
24 which covers the same period but tends to focus on literary and specialized texts  
25 rather than material for the general reader.

26 20. Since the 1960s, database compilers have been able to track  
27 contemporary spoken English more successfully, though for obvious reasons, none  
28 of the databases for the Founding Era and for the post-Civil War period cover the

1 spoken language of Americans. Although scholars can reconstruct some of that oral  
2 language, we are always doing so through the lens of print versions purporting to  
3 represent or comment on ordinary speech.

4 21. The newspaper databases I have examined are Readex Historical  
5 American Newspapers; Chronicling America (newspapers digitized by the Library  
6 of Congress); the British Newspaper Archive (digitized by the British Library); and  
7 two private subscription services, newspapers.com and newspaperarchive.com. For  
8 this report, newspapers.com provides the most-complete picture of the language of  
9 the Founding Era newspapers as well as the ordinary language of the later 19th  
10 century.

11 22. All the databases contain some duplicates. COFEA and COEME digitize  
12 multiple editions of the same work; and the newspaper databases contain a number  
13 of duplicate stories because, particularly in the period of newspaper growth during  
14 the 19th century—in an age before the wire services and syndication appeared, and  
15 before the larger papers began to set up news bureaus in key areas around the  
16 country and around the world—newspapers routinely printed each other’s stories,  
17 sometimes acknowledging their source and sometimes not. Still, the databases often  
18 offer more insight into the meaning of words and phrases than simply going to a  
19 dictionary. Jurists from Learned Hand to Felix Frankfurter to Frank Easterbrook  
20 and Richard Posner have warned their colleagues not to make a fortress of the  
21 dictionary. The corpora are by necessity incomplete. LCL doesn’t replace  
22 dictionary look-ups, but it does provide an important supplement to them.

### 23 **III. THE MEANING OF ARMS AND ACCOUTREMENTS IN THE DATABASES**

24 23. I was asked to look at the meaning of *arms* and *accoutrements*, along  
25 with the phrase *arms* and *accoutrements*, current in the Founding Era and during  
26 the period immediately following the adoption of the Fourteenth Amendment,  
27 focusing on whether the word *accoutrements* may be considered analogous to the  
28 present-day use of the term *magazine* in reference to firearms.

1       24. In the eighteenth and nineteenth centuries, *magazine* was a word that  
2 meant ‘storehouse, depot.’ A *magazine* was a place, often a building or warehouse,  
3 to store goods and supplies. When used in a military sense, a *magazine* was a  
4 designated area for storing gunpowder, and as such, it was subject to strict  
5 regulation: because gunpowder was an explosive substance, some towns banned or  
6 heavily regulated the storage of gunpowder within city limits. The term *magazine*  
7 was not used to refer to the compartment of a gun containing bullets until late in the  
8 nineteenth century, and the term was relatively rare until the 1920s. Before that  
9 time, bullets were kept in *cartridge boxes* or *cartridge cases*, and these bullet  
10 storage containers were part of the general category of military *accoutrements*, not  
11 *arms*.

12       25. The data on *accoutrements* suggest that the analogous LCMs are not  
13 *arms*, but *accoutrements*, the ancillary equipment associated with soldiering, or  
14 service in the military. *Cartridges*, *cartridge boxes* and later, *magazines*, are not  
15 arms in and of themselves.

16       26. The *Oxford English Dictionary* (OED), the standard dictionary of the  
17 English language compiled on historical principles, defines *accoutrements* as, items  
18 of apparel; (more generally) additional pieces of dress or equipment, trappings;  
19 (Military) the outfit of a soldier other than weapons and garments. [*OED* online,  
20 s.v. *accoutrement*; the *OED* and the corpus evidence make clear that *accoutrements*  
21 typically occurs as a plural.]

22       27. *Accoutrements* in its non-military sense typically refers to specialized  
23 clothing—that associated with certain professions (for example, clerical robes) or  
24 suitable for fancy-dress occasions (ball gowns, tuxes, and other formal attire). But  
25 the military sense of *accoutrements* generally refers not to uniforms or to weaponry,  
26 but to other military accessories worn or carried by soldiers. The example given to  
27 illustrate this second, military, sense is from the Duke of Wellington’s dispatches in  
28 1813: “In order to collect the wounded and their arms and accoutrements.” Here



1 Wellington, recognized by all as a consummate soldier who would soon defeat  
2 Napoleon at the Battle of Waterloo in 1815, makes a clear distinction between *arms*  
3 and *accoutrements*.

4 28. The term *accoutrement-maker*, though not defined separately by the  
5 *OED*, is illustrated with examples referring to a manufacturer of military  
6 accessories rather than arms; and the term *accoutrement shop* has this 1831  
7 example where guns and accoutrements are differentiated: “The crowd was so great  
8 in the Rue de Richelieu, . . . especially about the gunsmiths and accoutrement shops  
9 in the vicinity of the Palais Royal.” [*United Service Jnl.* i. 325]

10 29. The *OED* definitions are instructive. But in order to determine more  
11 specifically what the term *accoutrements* refers to, I consulted two digitized  
12 historical databases, or corpora. A COFEA database search for the occurrence  
13 *accoutrements* within 6 words of *arms* returned 873 hits (including a small number  
14 of duplicates). A similar search of COEME returned 126 hits, the earliest from  
15 1656. I determined that the two search terms, *arms* and *accoutrements*, often appear  
16 together as a single phrase, *arms and accoutrements*, typically in military contexts  
17 having to do with an army or militia unit. *Accoutrements* often occurs in a list  
18 alongside, but separate from, ammunition: *arms, accoutrements, (and) ammunition*,  
19 though when *ammunition* is not listed separately, the term *accoutrements* will  
20 generally include *ammunition*. *Accoutrements* sometimes occurs in a list alongside  
21 *clothing*, suggesting it may not always include uniforms (this finding informs the  
22 *OED* definition: military equipment other than arms and uniforms). But  
23 occasionally, *accoutrements* may include items classified as part of a uniform  
24 (influenced, most likely, by the general, nonmilitary sense of *accoutrements*, where  
25 the term usually refers to clothing associated with particular professions or  
26 activities). In sum, in the vast majority of examples, *accoutrements* functions as a  
27 catch-all term for military equipment *separate* from, and not including, *arms*.



1       30. But English usage is never simple. As linguists often say, “all grammars  
2 leak”—which is to say, there are always a few counterexamples in the data. The  
3 existence of counterexamples does not invalidate the data or undercut an  
4 interpretation: it simply shows that although the users of a language share a  
5 common sense of what words and grammatical constructions mean, variation in  
6 meaning and usage is a necessary aspect of all human language. It is not surprising,  
7 then, that rarely, in COFEA, *accoutrements* does encompass *arms*, as it does in this  
8 example:

9       A few years since, some boys, equipped in mock military  
10 *accoutrements*, such as paper-caps, paper-belts, wooden swords,  
11 &c. were beating up for recruits in Parliament-street, Boston. [*The*  
12 *American jest book*: Part I[-II], 1789; emphasis added; here military  
13 *accoutrements* includes toy swords.]

14       31. This cite from 1776 refers to guns and *other* military *accoutrements*,  
15 implying, too, that *arms* may be a subcategory of *accoutrements*:

16       [He] shall be provided with a fire arm and other military *accoutrements*  
17 provided by the militia law.

18       32. But besides a handful of exceptions, in literally hundreds and hundreds of  
19 cases, *arms* and *accoutrements* are treated as separate items of military gear. Here  
20 are some typical examples from the Founding Era:

21       **1776:** Fire arms and *accoutrements*

22       **1780:** arms, ammunition, *accoutrements*, drums and fifes in  
23 possession of the respective regiments.

24       **1795:** you will march . . . with arms and *accoutrements* in good order.

25       If any volunteer should want arms and ammunition, bring them  
26 forward, and they shall be supplied as well as possible. [COEME;  
27 the other examples are from COFEA]

28       **1798:** To hold his powder and his ball, his gun, *accoutrements*

1 and all . . . [This example rhymes because it's from a poem,  
2 indicating that the idiomatic phrase arms and accoutrements has  
3 become part of the general language available not just to military  
4 specialists but also to poets and novelists.]

5 33. A second COFEA search, for *accoutrements* alone, returned 1,235 hits.  
6 COEME yields 771 hits. These searches add a number of non-military contexts,  
7 where accoutrements refers to religious gear (robes, mitres, and so on) as well as  
8 other sorts of fancy or special clothing. These non-military examples do not  
9 reference weapons, ammunition, or other military equipment.

10 34. I supplemented my COFEA search with a search of the newspaper  
11 database, newspapers.com, for the Founding Era period, 1750–1800. The  
12 newspaper databases do not permit the kind of collocate searches that COFEA,  
13 COEME, and COHA allow. Entering two search terms returns results in which  
14 either one or both terms occur on the same page, though not necessarily in the same  
15 sentence, or even in the same article, and not necessarily as linked terms. There are  
16 1,392 hits for *accoutrements*. There are 692 matches for the exact phrases *arms and*  
17 *accoutrements*.

18 35. Here's a mid-18th century British example from the newspapers.com  
19 corpus where *arms* and *accoutrements* are separate categories, as is *ammunition*:

20 36. This Militia shall receive their Arms, Accoutrements, and  
21 Ammunition from the Ordnance. *Derby Mercury*, 1756.

22 37. Similarly, there's this “ploughshares into swords” example of a  
23 Cambridge University library to be converted to a military barracks:

24 [T]he new Building intended for a publick Library . . . may be  
25 converted into a Barrack, and be supplied with Provisions, Arms,  
26 and Accoutrements, at the Expençe of the University. 1756

27 38. A search of the Readex database of America's Historical Newspapers  
28 returns 3,103 hits from 1750–1800; and 2,036 hits from 1868–1880. This early

1 example from the colonial period appeared in the **Boston Evening Post** in 1750. It  
 2 distinguishes *arms* from uniforms, accoutrements, and other military equipment:

3 All Gentlemen Volunteers [in Nova Scotia] . . . shall be completely  
 4 Cloathed in blue Broad Cloth, receive Arms, Accoutrements, Provisions,  
 5 and all other Things necessary for a Gentleman Ranger.

6 39. This cite from the *Pittsburgh Gazette* in 1789 reflects a clear sense that  
 7 arms and accoutrements are distinct categories in the new nation as well:

8 The militia . . . must be considered as the palladium of our security . . . .

9 The formation and discipline of the militia of the continent should be  
 10 absolutely uniform; and that the same species of arms, accoutrements, and  
 11 military apparatus, should be introduced in every part of the United States.

12 40. The text of a bill in Congress to establish a uniform militia appeared in  
 13 the *New York Journal*, in 1790. It confirms the Founding-Era sense that *arms*,  
 14 *ammunition*, and *accoutrements* make up distinct and separate elements of a  
 15 soldier's kit:

16 There shall be appointed an adjutant general for each state . . . whose duty  
 17 it shall be to . . . report[] the actual situation of their arms, accoutrements,  
 18 and ammunition. . . Every non-commissioned officer or private . . . for  
 19 appearing at such meeting or rendezvous without his arms, ammunition, or  
 20 accoutrements, as directed by this act, shall pay the sum of twenty-five  
 21 cents.

22 41. And this cite from 1868 clearly distinguishes what counts as arms, and  
 23 what counts, separately, as accoutrements:

24 At Watertown Arsenal, Massachusetts . . . the following Arms, &c., will  
 25 be sold: 10,699 rifled and smooth-bore Muskets . . . ; 261 Carbines . . . ; 305  
 26 Sabres . . . ; lot of cavalry accoutrements, consisting of Bayonet Scabbards,  
 27 Cap Pouches, Cartridge Boxes, Gun Slings, Waist Belts, &c.”

28 42. The newspaper data parallels that of COFEA: the phrase *arms and*

1 *accoutrements* is almost always military. The phrase sometimes occurs alongside  
2 *ammunition* as a separate list item. *Accoutrements*, when it appears alone, is a more  
3 general term, used both for military and other gear, though in non-military contexts  
4 it is more directed toward clothing rather than ‘equipment’ (priests’ robes,  
5 ministerial garb, fancy ball gowns, badges of office), as is also indicated in the  
6 *OED* citations. In non-military contexts, *accoutrements* carries the suggestion of  
7 ceremonial gear, and less commonly, nonmilitary tools of the trade.

8 43. It’s clear that *arms and accoutrements* was, during the 18th and 19<sup>th</sup>  
9 centuries, a common military phrase, in both England and America. English often  
10 yokes terms commonly found together into idiomatic pairings, sometimes called  
11 binomials, like *bacon and eggs*, *salt and pepper*, or, in a legal context, *assault and*  
12 *battery* or *breaking and entering*. Such pairs take on the characteristics of a  
13 formula, and often appear in the same order (this order may be dictated by logical  
14 succession of events, or it may be random). *Eggs and bacon* is rarer than *bacon and*  
15 *eggs*. And it would be unusual to find *battery and assault*. Such ordered pairs are  
16 called “irreversible binomials,” though there’s nothing but custom (as in *salt and*  
17 *pepper*) and sometimes logic (as in *breaking and entering*) to prevent anyone from  
18 reversing the order.

19 44. The word *accoutrements* typically occurs in a list after *arms* (more rarely,  
20 it may occur before *arms* as well), and it is typically a separate category from *arms*  
21 (though not always, as the above examples show).

22 45. There are over 47,000 citations in newspapers.com for *arms* or  
23 *accoutrements* in the period 1868–1900, and 15,799 cites for the exact phrase *arms*  
24 *and accoutrements*. Examining a selection of the 15,799 citations of the phrase  
25 confirms that both in England and the US, *arms* and *accoutrements* are separate  
26 categories. Here is one example from Gloucestershire, in England, dated 1868:

27 [A] letter was received from the Home Secretary, pointing out the danger  
28

1 of permitting an accumulation of arms and accoutrements to take place in  
2 prisons, and requesting, if there were any arms or munitions of war stored  
3 in the prison, that they should be removed to the nearest military depot.

4 46. A similar cite from Iowa in 1868: “Persons having in their possession any  
5 arms, accoutrements or ammunition belonging to the State, are requested to return  
6 the same at once to the Adjutant General, as proper places have been provided by  
7 the State for the safe keeping of all such property.”

8 47. And this, from Stroudsburg, PA, also 1868: “More than half of the  
9 Seventh Cavalry (Custer’s) decamped with their horses, arms, and accoutrements,  
10 and probably made their way to the gold regions of Colorado and Montana.”

11 48. The circa-1868 data confirmed the Founding Era data that *accoutrements*  
12 is primarily a military term, and that when *accoutrements* co-occurs with *arms*, the  
13 terms refer to separate categories of equipment.

14 49. One final note on *accoutrements*. The U.S. Supreme Court’s recent  
15 decision in *New York State Rifle and Pistol Association v. Bruen* (No. 20-843,  
16 2022) references *North Carolina v. Huntley* (25 N.C. 418, 1843), a decision by the  
17 North Carolina Supreme Court affirming Huntley’s conviction for carrying a  
18 shotgun illegally “to the terror of the people,” as forbidden by the Statute of  
19 Northampton in 1328. In that decision, the Court states, A gun is an ‘unusual  
20 weapon,’ wherewith to be armed and clad. No man amongst us carries it about with  
21 him, as one of his everyday accoutrements—as a part of his dress.

22 50. In the citation above, *accoutrements* does not refer to weaponry, but to  
23 the more general category of ‘everyday attire, or clothing.’ It may be normal to  
24 wear a shirt, or a belt, or shoes, but it’s not normal, the Court is saying, to wear a  
25 gun in North Carolina in 1843. It’s legal—the Court agrees—to carry a gun for any  
26 lawful purpose, “either of business or amusement”—but it’s not *normal* or typical  
27 to do so. In affirming Huntley’s conviction, the Court noted that his purpose in  
28 carrying a shotgun was not a legal one.

1 **IV. SOME HISTORICAL NOTES ON THE USE OF THE WORD MAGAZINE**

2 51. Since the technology of arms and ammunition was changing by the mid-  
3 nineteenth century, I also searched for new uses of the term magazine in relation to  
4 *arms* and *accoutrements*. With advances in the design and manufacture of guns and  
5 ammunition, by the mid-nineteenth century, the term *magazine* starts to appear in  
6 the sense ‘ammunition container’ (replacing the earlier *cartridge box* or *cartridge*  
7 *case*). According to the *OED*, in the 18th and early 19th centuries, magazine  
8 referred generally to ‘a storehouse,’ and in military contexts it referred specifically  
9 to a storehouse for gunpowder. (The sense of ‘storehouse’ also led to the use of  
10 *magazine* to refer by the 18th century to a print publication containing a variety of  
11 articles, and its sense of ‘depot, warehouse,’ is cognate with the French word  
12 *magasin*, ‘a shop or store’).

13 52. Although most uses of the word *magazine* still refer to printed  
14 periodicals, during the 19th century, one sense of the term *magazine* narrows,  
15 referring more and more to an ‘ammunition container,’ a primary sense of the word  
16 in reference to firearms today. The *OED* defines sense IV b. of *magazine* as “A  
17 container or (detachable) receptacle in a repeating rifle, machine-gun, etc.,  
18 containing a supply of cartridges which are fed automatically to the breech,” with  
19 the earliest citation in this sense from 1868, the time period that marks the  
20 ratification of the Fourteenth Amendment and so is relevant to this LCL analysis.

21 53. COFEA and COEME do not cover the period past 1800. COHA, which  
22 does have 19th century coverage, turns up only a handful of uses of *magazine* in  
23 collocation with bullets, guns, rifles, or weapons, none of them before the 1890s.  
24 Most COHA cites refer to print magazines; a smaller number from 1820–1880 refer  
25 to gunpowder storehouses. Searching the word *magazine* in newspapers.com results  
26 in more than 3.3 million hits, the vast majority of them also referring to print  
27 journals. *Magazines* meaning ‘devices for holding bullets’ form only a very small  
28 subset of these citations. It took some thirty to forty years for the ‘bullet holder’



1 sense of the word *magazine* to become more common, and even then, text  
2 references to ammunition magazines often appear, not in general discourse, but in  
3 legislation restricting their size or use.

4 54. Most militia laws and regulations from the Founding Era specify  
5 minimum requirements for soldiers' weapons, ammunition, and accoutrements.  
6 Most laws regulating weapons in the mid-19th century restrict or ban specific kinds  
7 of weapons, often enumerating them, sometimes in terms we find colorful today but  
8 which were common at the time (Arkansas toothpicks, Bowie knives, slung shots,  
9 swords in canes, pistols capable of being concealed in a pocket). Occasionally these  
10 laws further identified such weapons as those used by "brawlers," thieves, robbers,  
11 or others bent on illegal activities. Other weapons restrictions follow the English  
12 tradition of limiting possession of weapons by social class, nationality, or race.

13 55. Although militia laws do specify weapons and other required  
14 accoutrements or pieces of military equipment, including horses for the officers,  
15 those laws that prohibit certain kinds of weapons during the two critical periods  
16 (1789–1810; 1868–1880) do not single out *parts* of weapons. Here is one  
17 exception, from a 1776 Maryland statute: "Resolved, that no muskets or rifles,  
18 except by the owner thereof on his removal to reside out of this province, or any  
19 gun barrels, gun locks, or bayonets, be carried out of his province, without the leave  
20 of the council of safety for the time being." [1776 Md. Laws 146].

21 56. I surveyed the gun regulations in the Duke Historical Database from the  
22 early medieval period through 1885 to see what terminology was used. None of the  
23 laws that prohibit weapons, aside from the Maryland statute above, specifies a gun  
24 part or ammunition case or accoutrements of any kind. Although many present a list  
25 of banned or prohibited weapons—usually without defining them [the assumption  
26 is that the reader knows what they refer to], none of the laws mention cartridge  
27 boxes, bullets, barrels, or other parts of any weapons.



1        57. Later, however, in the decades after the introduction of *magazines* as  
2 ‘carriers or holders of bullets,’ laws and regulations against their nonmilitary use  
3 started to appear. Here’s a 1919 Maine law banning guns with loaded magazines:  
4 No person shall have a rifle or shotgun, either loaded or with a cartridge in the  
5 magazine thereof, in or on any motor vehicle while the same is upon any highway  
6 or in the fields or forests.

7        58. Laws banning *machine guns* or firearms with *magazines* capable of firing  
8 multiple times without reloading appear in Vermont (1923), Rhode Island (1927),  
9 and Massachusetts (1927), among other states. Rhode Island’s law bans magazines  
10 which fire automatically or which hold more than twelve rounds: “machine gun”  
11 shall include any weapon which shoots automatically and any weapon which shoots  
12 more than twelve shots semi-automatically without reloading.

13        59. A 1933 Texas law bans “machine guns” capable of firing “more than five  
14 (5) shots or bullets.”

15        60. Finally, the Federal Firearms Act of 1934, which introduced a nationwide  
16 system of taxes, fees, and registration requirements for the transfer of certain types  
17 of guns, specifies in great detail the nature of the “firearms” covered by the statute,  
18 including their barrel length and type of firing mechanisms: “(a) The term ‘firearm’  
19 means a shotgun or rifle having a barrel of less than eighteen inches in length, or  
20 any other weapon, except a pistol or revolver, from which a shot is discharged by  
21 an explosive if such weapon is capable of being concealed on the person, or a  
22 machine gun, and includes a muffler or silencer for any firearm whether or not such  
23 firearm is included within the foregoing definition.”

24        61. The Act also provides a specific definition of “machine gun”: “(b) The  
25 term ‘machine gun’ means any weapon which shoots, or is designed to shoot,  
26 automatically or semiautomatically, more than one shot, without manual reloading,  
27 by a single function of the trigger.” [48 Stat. 1236. 73rd Congress, 2nd Session, Ch.  
28 757, HR 9741].

1   **V. CONCLUSION**

2       62. In effect, then, *accoutrements*, when it occurs alone, in a specifically  
3 military context, may function as a general term that includes *arms*, though it does  
4 not always include arms. In non-military contexts this does not apply: the  
5 *accoutrements* suitable for the clergy or the office worker *do not* normally include  
6 weaponry.

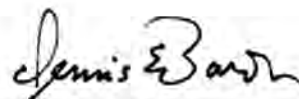
7       63. But there is no data that I have found showing that *arms* includes  
8 *accoutrements*, *magazines*, or any other *parts* of weapons.

9       64. In addition, ‘bullet holders,’ whether they are called *cartridge cases*,  
10 *magazines*, or simply, *machine guns*, both automatic and semi-automatic, regularly  
11 appear in legislation specifying or limiting their size or, in some cases, banning  
12 them outright.

13       65. To repeat, there is no data that I have found showing that *arms* includes  
14 *accoutrements*, *magazines*, or any other *parts* of weapons.

15  
16       I declare under penalty of perjury under the laws of the United States of  
17 America that the foregoing is true and correct.

18       Executed on November 7, 2022, at Champaign, IL.

19  
20  
21       

22       Dennis Baron  
23  
24  
25  
26  
27  
28

## **EXHIBIT 7**

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*State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION

12  
13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 3:17-cv-1017-BEN-JLB

**DECLARATION OF RYAN BUSSE**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

**DECLARATION OF RYAN BUSSE**

I, Ryan Busse, declare under penalty of perjury that the following is true and correct:

1. I am a former senior executive in the firearms industry and the author of *Gunfight: My Battle Against the Industry that Radicalized America* (New York: PublicAffairs, 2021). I make this declaration in support of Defendants' Supplemental Brief in Response to the Court's Order of August 29, 2022.

2. This declaration is based on my own personal knowledge and experience, and if I am called to testify as a witness, I could and would testify competently to the truth of the matters discussed in this declaration.

3. I have been retained by the California Department of Justice to render expert opinions in this case. I am being compensated at a rate of \$150 per hour.

**BACKGROUND AND QUALIFICATIONS**

4. I was raised with firearms as an integral part of my life. I began shooting with various guns as a young boy and continued to regularly use and study guns throughout my life (I am now 52). After graduating college, I entered the firearms industry in 1992. I became a sales executive in the firearms industry in 1995, and I spent more than 25 years in this role. While in the industry, I developed innovative sales teams, maintained relationships with the largest national retailers, and was responsible for worldwide sales of millions of firearms. I built a dealer-direct sales network that included more than 2500 firearms dealers including locations in all 50 states, and I regularly visited these dealers. In my job, I also studied and built sales programs that relied on understanding the technical nature of most firearms available in the U.S. market, including AR-platform and other types of rifles. During my career I played an integral role in building one of the largest firearms companies in the United States, Kimber, and I was nominated by shooting industry leadership many times for the SHOT Business "Shooting Industry Person

1 of the Year” Award.<sup>1</sup> I served in an executive sales capacity as Vice President of  
2 Sales until August 2020. While in the industry I served as an advisor to the United  
3 States Senate Sportsmen’s Caucus, and as the board chairman for Backcountry  
4 Hunters & Anglers, a national wildlife conservation and hunting organization.

5 5. I left the firearms industry because I was concerned about what I  
6 believed to be irresponsible and dangerous marketing and sales practices. Since I  
7 left, I have served as an advisor to the 2020 Biden presidential campaign, I have  
8 testified twice before the U.S. Congress about the firearms industry and gun policy  
9 (before the House Committee on Oversight and Reform<sup>2</sup> and the Joint Economic  
10 Committee<sup>3</sup>, respectively), I have been called to testify in closed-door briefings at  
11 the U.S. Senate, and I currently serve as a Senior Advisor to Giffords. I remain a  
12 proud and active gun owner, outdoorsman, and advocate for responsible gun  
13 ownership. I have provided expert witness testimony in *Miller v. Bonta*, No. 3:19-  
14 cv-01537-BEN-JLB (S.D. Cal.).

### 15 OPINIONS

16 6. When I first started my work in the gun industry neither AR-15s nor  
17 large-capacity magazines (those capable of holding more than 10 rounds) were  
18 common. There was an unspoken agreement in the industry that tactical guns and  
19 gun paraphernalia—and virtually all large capacity magazines were considered  
20 tactical at this time—would not be displayed at trade shows or used at industry-  
21 sponsored shooting events. Individuals who brought such rifles to shooting events  
22 were asked not to return. This remained true as late as 2007. It was not until very  
23

24 \_\_\_\_\_  
25 <sup>1</sup> SHOT Business is a trade publication of the shooting and firearms industry,  
26 and “Person of the Year” was the highest award given to an individual in the  
firearms industry.

27 <sup>2</sup> See <https://bit.ly/3CVDQc4>.

28 <sup>3</sup> See <https://bit.ly/3My2gLJ>.

1 recently that the gun industry began to push AR-15s leading to their popularization  
2 today.

3       7. Despite the recent popularization of large-capacity magazines, it is  
4 important to note that I am not aware of a single existing firearm that requires a  
5 high-capacity magazine to function as designed. By this, I mean that all firearms  
6 that can accept a large-capacity magazine can also accept a magazine that holds 10  
7 or fewer rounds and function precisely as intended. This is true even of AR-style  
8 rifles. Although many AR-style rifles are sold with a 30-round magazine, the  
9 manufacturers all offer the optional purchase of 10-round or even lower-capacity  
10 magazines. There are many pistols (such as the very popular Model 1911—which  
11 was the accepted sidearm of the U.S. Military for decades and is still one of the  
12 most widely sold guns in the United States) that are built for magazines of eight  
13 rounds or less. While larger 10-plus round magazines exist for the 1911 and other  
14 similar pistols, a smaller magazine (standard seven or eight round) are considered  
15 preferable by almost all consumers because the physical size/profile of the shorter  
16 magazine is easier to carry, shoot and conceal. Still today, the 1911 and other  
17 similar guns which are built to function with sub-10 round magazines are built by  
18 many gun companies (Smith and Wesson, Ruger, Kimber, Springfield, Rock Island,  
19 Dan Wesson, and many other companies build and sell these 1911 pistols) and they  
20 are sold in high volumes by most retailers in the United States. These guns are still  
21 considered extremely effective self-defense firearms by many of the leading  
22 firearms trainers in the country.

23       8. Today there are also many handguns that can accept a magazine within  
24 15–20-plus rounds, but these handguns can accept and fully function with a  
25 magazine that holds 10 or fewer rounds. Firearm manufacturers have been  
26 providing these lower capacity magazines for years and can easily modify a “high  
27 capacity” magazine into one that will accept only 10 rounds but still function just  
28



1 as designed in a firearm. In 1994, Congress enacted the Violence Crime Control  
2 and Law Enforcement Act that prohibited the possession of “large capacity  
3 ammunition feeding devices” defined as any magazine capable of accepting more  
4 than ten rounds of ammunition. California enacted a ban on the sale of large  
5 capacity magazines in 2000 and that law is still on the books today. Since that  
6 enactment, and still today, firearms manufacturers build and sell dozens of gun  
7 models and magazines that are compliant with that California law. I am not aware  
8 of any assertion that these guns, built for and sold in California, are incapable of  
9 functioning as designed.

10 9. Because a large capacity magazine is not a required component for a  
11 firearm to operate, it can and should be characterized as a firearms accessory. There  
12 is a massive market for magazines that far surpasses that of the market for firearms  
13 themselves in terms of numeric sales. There are companies, such as Magpul, that  
14 entirely specialize in firearms accessories including large capacity magazines. In  
15 fact, most firearms manufacturers do not consider the magazines as integral enough  
16 to build their own magazines for their own guns. In almost all cases even the largest  
17 gun manufacturers contract with “accessory makers” who build magazines and then  
18 supply them to the gun manufacturer who then sells the magazines with the guns  
19 but also as an “add-on” accessory. Based on my experience, these magazines are a  
20 large profit center for the gun industry and sales of these magazines are treated as a  
21 category separate from gun sales throughout the sales chain. For example, I am  
22 aware of compensation programs from gun manufacturers that offer increased  
23 payment for magazines as opposed to guns, and retailers often incentivize their  
24 employees to push a buyer to purchase additional magazines because it is known  
25 that consumers view the purchase of magazines as separate from the gun and they  
26 are therefore viewed as “add-on sales” for retailers. These magazines are almost  
27 always manufactured by third party companies (not the manufacturer of the  
28 firearm). The degree to which a magazine is viewed as an accessory by firearms

1 retailers is reinforced by the fact that when manufacturers add additional magazines  
2 to the gun at the time of sale as an incentive to encourage consumers to purchase  
3 the gun, the practice often upsets the retailers who view this as taking away an  
4 accessory sale they could have made.

5 10. In my experience, magazines are often used as marketing tactics to  
6 increase sales. Many gun buyers are encouraged to buy extra magazines of various  
7 sizes and they are encouraged to build an excess supply of more magazines than are  
8 needed even though these accessories basically never wear out. While it is possible  
9 for someone who shoots high volumes to eventually wear out a magazine, these  
10 shooters are exceptionally rare. Additionally, when a magazine begins to wear out  
11 you can purchase a new spring tune-up kit for the magazine and thereby refurbish  
12 the magazine.

13 11. It is also important to note that even the ability of guns to accept an  
14 external magazine is not as ubiquitous as one would be led to believe. Fixed  
15 magazine firearms are and have long been extremely prevalent. The majority of  
16 hunting rifles have a fixed internal magazine, all revolvers hold ammunition in what  
17 is in essence a circular fixed magazine, almost all shotguns are built with fixed  
18 magazines or without any magazine at all, some tactical rifles, and most tactical  
19 shotguns are built with, and function with fixed magazines.

20 12. Lastly, many widely available guns including all AR-15 style rifles  
21 accept all other AR-15 magazines. In other words, the magazine is a universal  
22 accessory much like tires that fit many brands of cars. This is true of AR-15  
23 magazines regardless of capacity or size (a 10 round AR-15 magazine will function  
24 in all other AR-15 style firearms). It is also true of the 1911 style pistol which is  
25 one of the most popular self-defense guns in history. This century-old design is still  
26 a leading seller and its standard specifications call for a seven or eight round  
27 magazines. Dozens of the largest manufacturers in the world currently offer 1911  
28 pistol models and magazines from each are interchangeable between all of these

1 others. This interchangeability of magazines as accessories is illustrated by the fact  
2 that third party manufacturers who produce magazines for multiple gun companies  
3 will sometimes mistakenly ship a magazine from “company A” to “company B”  
4 because the only difference is the marking (there is no functional difference). I have  
5 personally witnessed this on multiple occasions.

6 13. Based on my experience, a large-capacity magazine is not necessary to  
7 use a firearm effectively for self-defense or other sporting purpose, like hunting.

8 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the  
9 laws of the United States of America that the foregoing is true and correct.

10 Executed on November 9, 2022, at Kalispell, Montana.

11  
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13 

14 Ryan Busse  
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## **EXHIBIT 8**

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8 *official capacity as Attorney General of the*  
*State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
17 **CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

18 Plaintiffs,

19 v.

20 **ROB BONTA, in his official capacity as**  
21 **Attorney General of the State of**  
**California; and DOES 1-10,**

22 Defendants.  
23  
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26  
27  
28

17-cv-1017-BEN-JLB

**DECLARATION OF SAUL**  
**CORNELL**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                                   **DECLARATION OF SAUL CORNELL**

2           I, Saul Cornell, declare under penalty of perjury that the following is true and  
3 correct:

4           1.     I have been asked to provide an expert opinion on the history of  
5 firearms regulation in the Anglo-American legal tradition, with a particular focus on  
6 how the Founding era understood the right to bear arms, as well as the  
7 understanding of the right to bear arms held at the time of the ratification of the  
8 Fourteenth Amendment to the United States Constitution. In *New York State Rifle*  
9 *& Pistol Ass'n Inc. v. Bruen*, the U.S. Supreme Court underscored that text, history,  
10 and tradition are the foundation of modern Second Amendment jurisprudence. This  
11 modality of constitutional analysis requires that courts analyze history and evaluate  
12 the connections between modern gun laws and earlier approaches to firearms  
13 regulation in the American past. My report explores these issues in some detail.  
14 Finally, I have been asked to evaluate the statute at issue in this case, particularly  
15 regarding its connection to the tradition of firearms regulation in American legal  
16 history.

17           2.     This declaration is based on my own personal knowledge and  
18 experience, and if I am called to testify as a witness, I could and would testify  
19 competently to the truth of the matters discussed in this declaration.

20                                   **BACKGROUND AND QUALIFICATIONS**

21           3.     I am the Paul and Diane Guenther Chair in American History at  
22 Fordham University. The Guenther Chair is one of three endowed chairs in the  
23 history department at Fordham and the only one in American history. In addition to  
24 teaching constitutional history at Fordham University to undergraduates and  
25 graduate students, I teach constitutional law at Fordham Law School. I have been a  
26 Senior Visiting research scholar on the faculty of Yale Law School, the University  
27 of Connecticut Law School, and Benjamin Cardozo Law School. I have given  
28 invited lectures, presented papers at faculty workshops, and participated in

1 conferences on the topic of the Second Amendment and the history of gun  
 2 regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA  
 3 Law School, the University of Pennsylvania Law School, Columbia Law School,  
 4 Duke Law School, Pembroke College Oxford, Robinson College, Cambridge,  
 5 Leiden University, and McGill University.<sup>1</sup>

6 4. My writings on the Second Amendment and gun regulation have been  
 7 widely cited by state and federal courts, including the majority and dissenting  
 8 opinions in *Bruen*.<sup>2</sup> My scholarship on this topic has appeared in leading law  
 9 reviews and top peer-reviewed legal history journals. I authored the chapter on the  
 10 right to bear arms in *The Oxford Handbook of the U.S. Constitution* and co-  
 11 authored the chapter in *The Cambridge History of Law in America* on the Founding  
 12 era and the Marshall Court, the period that includes the adoption of the Constitution  
 13 and the Second Amendment.<sup>3</sup> Thus, my expertise not only includes the history of  
 14 gun regulation and the right to keep and bear arms, but also extends to American  
 15 legal and constitutional history broadly defined. I have provided expert witness  
 16 testimony in *Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, No.  
 17 14-cv-02850 (D. Colo.); *Chambers, v. City of Boulder*, No. 2018 CV 30581 (Colo.  
 18 D. Ct., Boulder Cnty.), *Zeleny v. Newsom*, No. 14-cv-02850 (N.D. Cal.), and *Miller*  
 19 *v. Smith*, No. 2018-cv-3085 (C.D. Ill.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG  
 20 (S.D. Cal.), 34 F.4th 704 (9th Cir. 2022); *Baird v. Bonta*, No. 2:19-cv-00617 (E.D.  
 21 Cal.); *Worth v. Harrington*, No. 21-cv-1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-  
 22 cv-01537-BEN-JLB (S.D. Cal.).

23  
 24 <sup>1</sup> For a full *curriculum vitae* listing relevant invited and scholarly  
 presentations, see Exhibit 1.

25 <sup>2</sup> *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

26 <sup>3</sup> Saul Cornell, *The Right to Bear Arms*, in *THE OXFORD HANDBOOK OF THE*  
 27 *U.S. CONSTITUTION* 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber  
 eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the*  
 28 *Early Federal System*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 518–544  
 (Christopher Tomlins & Michael Grossberg eds., 2008).



## RETENTION AND COMPENSATION

5. I am being compensated for services performed in the above-entitled case at an hourly rate of \$500 for reviewing materials, participating in meetings, and preparing reports; \$750 per hour for depositions and court appearances; and an additional \$100 per hour for travel time. My compensation is not contingent on the results of my analysis or the substance of any testimony.

## BASIS FOR OPINION AND MATERIALS CONSIDERED

6. The opinion I provide in this report is based on my review of the amended complaint filed in this lawsuit, my review of the local ordinances at issue in this lawsuit, my education, expertise, and research in the field of legal history. The opinions contained herein are made pursuant to a reasonable degree of professional certainty.

## SUMMARY OF OPINIONS

7. Understanding text, history, and tradition require a sophisticated grasp of historical context. One must canvass the relevant primary sources, secondary literature, and jurisprudence to arrive at an understanding of the scope of permissible regulation consistent with the Second Amendment.

8. It is impossible to understand the meaning and scope of Second Amendment protections without understanding the way Americans in the Founding era approached legal questions and rights claims. In contrast to most modern lawyers, the members of the First Congress who wrote the words of the Second Amendment and the American people who enacted the text into law were well schooled in English common law ideas. Not every feature of English common law survived the American Revolution, but there were important continuities between English law and the common law in America.<sup>4</sup> Each of the new states, either by

<sup>4</sup> William B. Stoebuck, *Reception of English Common Law in the American Colonies*, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776, DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, *Law for the Empire: The Common Law in Colonial America and the Problem of Legal*

(continued...)

1 statute or judicial decision, adopted multiple aspects of the common law, focusing  
 2 primarily on those features of English law that had been in effect in the English  
 3 colonies for generations.<sup>5</sup> No legal principle was more important to the common  
 4 law than the concept of the peace.<sup>6</sup> As one early American justice of the peace  
 5 manual noted: “the term peace, denotes the condition of the body politic in which  
 6 no person suffers, or has just cause to fear any injury.”<sup>7</sup> Blackstone, a leading  
 7 source of early American views about English law, opined that the common law  
 8 “hath ever had a special care and regard for the conservation of the peace; for peace  
 9 is the very end and foundation of civil society.”<sup>8</sup>

10 9. In *Bruen*, Justice Kavanaugh reiterated *Heller*’s invocation of  
 11 Blackstone’s authority as a guide to how early Americans understood their  
 12 inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous  
 13 terms that there was a “well established historical tradition of prohibiting the  
 14 carrying of dangerous and unusual weapons.”<sup>9</sup> The dominant understanding of  
 15 the Second Amendment and its state constitutional analogues at the time of their

16 \_\_\_\_\_  
 17 *Diversity*, 89 CHI.-KENT L. REV. 937 (2014).

18 <sup>5</sup> 9 STATUTES AT LARGE OF PENNSYLVANIA 29-30 (Mitchell & Flanders eds.  
 19 1903); FRANCOIS XAVIER MARTIN, A COLLECTION OF STATUTES OF THE  
 PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA 60–61  
 (Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

20 <sup>6</sup> LAURA F. EDWARDS, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND  
 THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH 105-  
 109, 227-228 (University of North Carolina Press, 2009).

21 <sup>7</sup> JOSEPH BACKUS, THE JUSTICE OF THE PEACE 23 (1816).

22 <sup>8</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES \*349.

23 <sup>9</sup> *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008), and n. 26.  
 24 Blackstone and Hawkins, two of the most influential English legal writers consulted  
 25 by the Founding generation, described these types of limits in slightly different  
 26 terms. The two different formulations related to weapons described as dangerous  
 27 and unusual in one case and sometimes as dangerous or unusual in the other  
 28 instance, see Saul Cornell, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 FORDHAM URB. L.J. 1695, 1713 (2012). It is also possible that the phrase was an example of an archaic grammatical and rhetorical form hendiadys; see Samuel Bray, ‘Necessary AND Proper’ and ‘Cruel AND Unusual’: *Hendiadys in the Constitution*, 102 VIRGINIA L. REV. 687 (2016).

1 adoption in the Founding period forged an indissoluble link between the right to  
2 keep and bear arms with the goal of preserving the peace.<sup>10</sup>

3 10. “Constitutional rights,” Justice Scalia wrote in *Heller*, “are enshrined  
4 with the scope they were thought to have when the people adopted them.”<sup>11</sup>  
5 Included in this right was the most basic right of all: the right of the people to  
6 regulate their own internal police. Although modern lawyers and jurists are  
7 accustomed to thinking of state police power, the Founding generation viewed this  
8 concept as a right, not a power.<sup>12</sup> The first state constitutions clearly articulated  
9 such a right — including it alongside rights more familiar to modern Americans,  
10 most notably, the right to bear arms.<sup>13</sup> Pennsylvania’s Constitution framed this  
11 estimable right succinctly: “That the people of this State have the sole, exclusive  
12 and inherent right of governing and regulating the internal police of the same.”<sup>14</sup>

13 <sup>10</sup> On Founding-era conceptions of liberty, see JOHN J. ZUBLY, *THE LAW OF*  
14 *LIBERTY* (1775). The modern terminology to describe this concept is “ordered  
15 liberty.” See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent  
16 elaboration of the concept, JAMES E. FLEMING & LINDA C. MCCLAIN, *ORDERED*  
17 *LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES* (Harvard University Press,  
18 2013), 44-45. On Justice Cardozo and the ideal of ordered liberty, see *Palko v.*  
*Connecticut*, 302 U.S. 319, 325 (1937); John T. Noonan, Jr., *Ordered Liberty:*  
*Cardozo and the Constitution*, 1 *CARDOZO L. REV.* 257 (1979); Jud Campbell,  
*Judicial Review, and the Enumeration of Rights*, 15 *GEO. J.L. & PUB. POL’Y* 569,  
576-77 (2017).

19 <sup>11</sup> *Heller*, 554 U.S. at 634–35; William J. Novak, *Common Regulation: Legal*  
*Origins of State Power in America*, 45 *HASTINGS L.J.* 1061, 1081–83 (1994);  
20 Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the*  
*Constitution*, 20 *J. POL’Y HIST.* 47 (2008).

21 <sup>12</sup> On the transformation of the Founding era’s ideas about a “police right”  
into the more familiar concept of “police power,” see generally Aaron T. Knapp,  
22 *The Judicialization of Police*, 2 *CRITICAL ANALYSIS OF L.* 64 (2015). See also  
MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS*  
23 *OF AMERICAN GOVERNMENT* (2005), 82-87; Christopher Tomlins, *Necessities of*  
*State: Police, Sovereignty, and the Constitution*, 20 *J. OF POL’Y HIST.* 47 (2008).

24 <sup>13</sup> PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV  
25 (1776); N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and VT. DECLARATION OF  
RIGHTS, art. V (1777).

26 <sup>14</sup> Modern style police forces did not emerge until the middle of the next  
27 century, and although these early police forces were modeled on military style  
organizations, they did not routinely carry firearms until after the Civil War, see Scott  
28 W. Phillips, *A Historical Examination of Police Firearms* 94 *THE POLICE*  
*JOURNAL* 122 (2021).

1 Thus, if Justice Scalia’s rule applies to the scope of the right to bear arms, it must  
2 also apply to the scope of the right of the people to regulate their internal police.  
3 The history of gun regulation in the decades after the right to bear arms was  
4 codified in both the first state constitutions and the federal bill of rights underscores  
5 this important point.

6 11. In the years following the adoption of the Second Amendment and its  
7 state analogues, firearm regulation increased. Indeed, the individual states exercised  
8 their police powers to address longstanding issues and novel problems created by  
9 firearms in American society. In particular, the states regulated and when  
10 appropriate prohibited categories of weapons deemed to be dangerous *or* unusual.

11 **I. THE HISTORICAL INQUIRY REQUIRED BY *BRUEN*, *MCDONALD*, AND**  
12 ***HELLER***

13 12. The United States Supreme Court’s decisions in *Heller*, *McDonald*<sup>15</sup>,  
14 and *Bruen* have directed courts to look to text and history for guideposts in  
15 evaluating the scope of permissible firearms regulation under the Second  
16 Amendment. In another case involving historical determinations, Justice Thomas,  
17 the author of the majority opinion in *Bruen*, has noted that judges must avoid  
18 approaching history, text, and tradition with an “ahistorical literalism.”<sup>16</sup> Legal  
19 texts must not be read in a decontextualized fashion detached from the web of  
20 historical meaning that made them comprehensible to Americans living in the past.  
21 Instead, understanding the public meaning of constitutional texts requires a solid  
22 grasp of the relevant historical contexts.<sup>17</sup>

23 13. Following the mandates set out in *Heller*, *McDonald* and more recently  
24 in *Bruen*, history provides essential guideposts in evaluating the scope of

25 <sup>15</sup> *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

26 <sup>16</sup> *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019)  
27 (Thomas, J.) (criticizing “ahistorical literalism”).

28 <sup>17</sup> See Jonathan Gienapp, *Historicism and Holism: Failures of Originalist*  
*Translation*, 84 FORDHAM L. REV. 935 (2015).

1 permissible regulation under the Second Amendment.<sup>18</sup> Moreover, as *Bruen* makes  
 2 clear, history neither imposes “a regulatory straightjacket nor a regulatory blank  
 3 check.”<sup>19</sup> The Court acknowledged that when novel problems created by firearms  
 4 are at issue the analysis must reflect this fact: “other cases implicating  
 5 unprecedented societal concerns or dramatic technological changes may require a  
 6 more nuanced approach.”<sup>20</sup> *Bruen* differentiates between cases in which contested  
 7 regulations are responses to long standing problems and situations in which modern  
 8 regulations address novel problems with no clear historical analogues from the  
 9 Founding era or the era of the Fourteenth Amendment.

10 14. In particular, *Bruen* suggests three key contextually dependent  
 11 inquiries<sup>21</sup> courts must conduct to analyze the history of regulation and try and infer  
 12 what the absence of a regulatory tradition means as a matter of law:

- 13 • When a challenged regulation addresses a general societal problem that  
 14 has persisted since the 18th century, the lack of a distinctly similar  
 15 historical regulation addressing that problem is relevant evidence that  
 16 the challenged regulation is inconsistent with the Second Amendment;
- 17 • Likewise, if earlier generations addressed the societal problem, but did  
 18 so through materially different means, that also could be evidence that  
 19 a modern regulation is unconstitutional; and
- 20 • If some jurisdictions actually attempted to enact analogous regulations  
 21 during this timeframe, but those proposals were rejected on  
 22 constitutional grounds, that rejection surely would provide some  
 23 probative evidence of unconstitutionality.

24 15. A mechanistic strategy of digital searching for historical gun laws would  
 25 be incapable of answering those historical inquiries. Instead, a historian seeking to

26 <sup>18</sup> *Bruen*, 142 S. Ct. at 2127.

27 <sup>19</sup> *Id.* at 2133.

28 <sup>20</sup> *Id.* at 2132.

<sup>21</sup> *Id.* at 2131.

1 answer those inquiries would need to holistically research and analyze how firearms  
2 technology has changed, how consumer demand has waxed and waned, and how the  
3 people, acting through their representatives, respond to the societal ills created by  
4 those changes.

5 16. In the years between *Heller* and *Bruen*, historical scholarship has  
6 expanded our understanding of the history of arms regulation in the Anglo-  
7 American legal tradition, but much more work needs to be done to fill out this  
8 picture.<sup>22</sup> Indeed, such research is still ongoing: new materials continue to emerge;  
9 and in the months since *Bruen* was decided, additional evidence about the history of  
10 regulation has surfaced and new scholarship interpreting it has appeared in leading  
11 law reviews and other scholarly venues.<sup>23</sup>

12 17. Justice Kavanaugh underscored a key holding of *Heller* in his *Bruen*  
13 concurrence: “Like most rights, the right secured by the Second Amendment is  
14 not unlimited. From Blackstone through the 19th-century cases, commentators  
15 and courts routinely explained that the right was not a right to keep and carry any  
16 weapon whatsoever in any manner whatsoever and for whatever purpose.”  
17 Crucially, the Court further noted that “we do think that *Heller* and *McDonald* point  
18 toward at least two metrics: how and why the regulations burden a law-abiding  
19 citizen’s right to armed self-defense.”<sup>24</sup>

20 18. One overarching principle regarding firearms regulation does  
21 emerge from this period and it reflects not only the common law assumptions  
22 familiar to the Founding generation, but it is hard-wired into the Second  
23

24 <sup>22</sup> Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of*  
25 *Second Amendment Law & Policy*, 80 L. & CONTEMP. PROBS. 1 (2017).

26 <sup>23</sup> *Symposium — The 2nd Amendment at the Supreme Court: “700 Years Of*  
27 *History” and the Modern Effects of Guns in Public*, 55 U.C. DAVIS L. REV. 2495  
28 (2022); *NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE*  
OF GUNS IN AMERICAN LAW AND SOCIETY (Joseph Blocher, Jacob D. Charles &  
Darrell A.H. Miller eds., forthcoming 2023).

<sup>24</sup> *Bruen*, 142 S. Ct. at 2132–33.



1 Amendment itself. As Justice Scalia noted in *Heller*, and Justice Thomas reiterated  
2 in *Bruen*, the original Second Amendment was a result of interest balancing  
3 undertaken by the people themselves in framing the federal Constitution and the  
4 Bill of Rights. Thus, from its outset the Second Amendment recognizes both the  
5 right to keep and bear arms and the right of the people to regulate arms to promote  
6 the goals of preserving a free state. An exclusive focus on rights and a  
7 disparagement of regulation is thus antithetical to the plain meaning of the text of  
8 the Second Amendment. Although rights and regulation are often cast as  
9 antithetical in the modern gun debate, the Founding generation saw the two goals as  
10 complimentary. Comparing the language of the Constitution's first two  
11 amendments and their different structures and word choice makes this point crystal  
12 clear. The First Amendment prohibits "abridging" the rights it protects. In standard  
13 American English in the Founding era, to "abridge" meant to "reduce." Thus, the  
14 First Amendment prohibits a diminishment of the rights it protects. The Second  
15 Amendment's language employs a very different term, requiring that the right to  
16 bear arms not be "infringed."<sup>25</sup> In Founding-era American English, the word  
17 "infringement" meant to "violate" or "destroy." In short, when read with the  
18 Founding era's interpretive assumptions and legal definitions in mind, the two  
19 Amendments set up radically different frameworks for evaluating the rights they  
20 enshrined in constitutional text. Members of the Founding generation would have  
21 understood that the legislature could regulate the *conduct* protected by the Second  
22 Amendment and comparable state arms bearing provisions as long such regulations  
23 did not destroy the underlying *right*.

24  
25 <sup>25</sup> The distinction emerges clearly in a discussion of natural law and the law  
26 of nations in an influential treatise on international law much esteemed by the  
27 Founding generation: "Princes who infringe the law of nations, commit as great a  
28 crime as private people, who violate the law of nature," J.J. BURLAMAQUI, THE  
PRINCIPLES OF NATURAL LAW (Thomas Nugent trans., 1753) at 201. This book was  
among those included in the list of important texts Congress needed to procure, see  
Report on Books for Congress, [23 January] 1783," *Founders Online*, National  
Archives, <https://founders.archives.gov/documents/Madison/01-06-02-0031>.



1           19. John Burn, author of an influential eighteenth-century legal dictionary,  
2 illustrated the concept of infringement in the context of his discussion of violations  
3 of rights protected by the common law. Liberty, according to Burns, was not  
4 identical to that “wild and savage liberty” of the state of nature. True liberty, by  
5 contrast, only existed when individuals created civil society and enacted laws and  
6 regulations that promoted *ordered* liberty.<sup>26</sup>

7           20. Similarly, Nathan Bailey’s *Dictionarium Britannicum* (1730) defined  
8 “abridge” as to “shorten,” while “infringe” was defined as to “break a law.”<sup>27</sup> And  
9 his 1763 *New Universal Dictionary* repeats the definition of “abridge” as “shorten”  
10 and “infringe” as “to break a law, custom, or privilege.”<sup>28</sup> Samuel Johnson’s  
11 *Dictionary of the English Language* (1755) defines “infringe” as “to violate; to  
12 break laws or contracts” or “to destroy; to hinder.”<sup>29</sup> Johnson’s definition of  
13 “abridge” was “to shorten” and “to diminish” or “to deprive of.”<sup>30</sup> And Noah  
14 Webster’s *An American Dictionary of the English Language* (1828) largely repeats  
15 Johnson’s definitions of “infringe” and “abridge.”<sup>31</sup>

16           21. Regulation, including robust laws, were not understood to be an  
17 “infringement” of the right to bear arms, but rather the necessary foundation for the  
18 proper exercise of that right as required by the concept of ordered liberty.<sup>32</sup> As one  
19

20           <sup>26</sup>*Liberty*, A NEW LAW DICTIONARY (1792) *See also*, Jud Campbell,  
21 *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW &  
22 CONTEMP. PROBS. 31, 32–33 (2020)

23           <sup>27</sup> *Abridge*, DICTIONARIUM BRITANNICUM (1730).

24           <sup>28</sup> *Abridge*, NEW UNIVERSAL DICTIONARY (1763).

25           <sup>29</sup> *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

26           <sup>30</sup> *Abridge*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

27           <sup>31</sup> *Abridge*, *Infringe*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE  
28 (1828).

29           <sup>32</sup> Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of*  
30 *Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). *See generally*  
31 GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY,*  
32 *EXCLUSION, AND THE FALL OF THE FOUNDERS’ CONSTITUTION*, 1780s–1830s, at 2;  
33 Victoria Kahn, *Early Modern Rights Talk*, 13 YALE J.L. & HUMAN. 391 (2001)

(continued...)

1 patriotic revolutionary era orator observed, almost a decade after the adoption of the  
 2 Constitution: “True liberty consists, not in having *no government*, not in a  
 3 *destitution of all law*, but in our having an equal voice in the formation and  
 4 execution of the laws, according as they effect [*sic*] our persons and property.”<sup>33</sup>  
 5 By allowing individuals to participate in politics and enact laws aimed at promoting  
 6 the health, safety, and well-being of the people, liberty flourished.<sup>34</sup>

7 22. The key insight derived from taking the Founding era conception of  
 8 rights seriously and applying the original understanding of the Founding era’s  
 9 conception of liberty is the recognition that regulation and liberty were not  
 10 antithetical to one another. The inclusion of rights guarantees in constitutional texts  
 11 was not meant to place them beyond the scope of legislative control. “The point of  
 12 retaining natural rights,” originalist scholar Jud Campbell reminds us “was not to  
 13 make certain aspects of natural liberty immune from governmental regulation.  
 14 Rather, retained natural rights were aspects of natural liberty that could be restricted  
 15 only with just cause and only with consent of the body politic.”<sup>35</sup> Rather than limit  
 16 rights, regulation was the essential means of preserving rights, including self-

17 (discussing how the early modern language of rights incorporated aspects of natural  
 18 rights and other philosophical traditions); Joseph Postell, *Regulation During the*  
 19 *American Founding: Achieving Liberalism and Republicanism*, 5 AM. POL.  
 20 THOUGHT 80 (2016) (examining the importance of regulation to Founding political  
 21 and constitutional thought).

22 <sup>33</sup> Joseph Russell, *An Oration; Pronounced in Princeton, Massachusetts, on*  
 23 *the Anniversary of American Independence, July 4, 1799*, at 7 (July 4, 1799), (text  
 24 available in the Evans Early American Imprint Collection) (emphasis in original).

25 <sup>34</sup> See QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998), 17-36  
 26 (examining neo-Roman theories of free citizens and how it impacted the  
 27 development of political theory in England); THE NATURE OF RIGHTS AT THE  
 28 AMERICAN FOUNDING AND BEYOND (Barry Alan Shain ed., 2007), 125-27, 139-43  
 (discussing how the Founding generation approached rights, including the  
 republican model of protecting rights by representation).

<sup>35</sup> Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L.  
 REV. 517, 527 (2019) (emphasis in original). See generally Saul Cornell, *Half*  
*Cocked: The Persistence of Anachronism and Presentism in the Academic Debate*  
*Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206  
 (2016) (noting that the Second Amendment was not understood in terms of the  
 simple dichotomies that have shaped modern debate over the right to bear arms).

1 defense.<sup>36</sup> In fact, without robust regulation of arms, it would have been impossible  
 2 to implement the Second Amendment and its state analogues. Mustering the militia  
 3 required keeping track of who had weapons and included the authority to inspect  
 4 those weapons and fine individuals who failed to store them safely and keep them  
 5 in good working order.<sup>37</sup> The individual states also imposed loyalty oaths,  
 6 disarming those who refused to take such oaths. No state imposed a similar oath as  
 7 pre-requisite to the exercise of First Amendment-type liberties. Thus, some forms  
 8 of prior restraint, impermissible in the case of expressive freedoms protected by the  
 9 First Amendment or comparable state provisions, were understood by the Founding  
 10 generation to be perfectly consistent with the constitutional right to keep and bear  
 11 arms.<sup>38</sup>

12 23. In keeping with the clear public meaning of the Second Amendment's  
 13 text and comparable state provisions, early American governments enacted laws to  
 14 preserve the rights of law-abiding citizens to keep and bear arms and promote the  
 15 equally vital goals of promoting public safety. As long as such laws did not destroy  
 16 the right of self-defense, the individual states enjoyed broad latitude to regulate  
 17 arms.<sup>39</sup>

18 <sup>36</sup> See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15  
 19 GEO. J.L. & PUB. POL'Y 569, 576–77 (2017). Campbell's work is paradigm-  
 20 shifting, and it renders Justice Scalia's unsubstantiated claim in *Heller* that the  
 21 inclusion of the Second Amendment in the Bill of Rights placed certain forms of  
 22 regulation out of bounds totally anachronistic. This claim has no foundation in  
 23 Founding-era constitutional thought, but reflects the contentious modern debate  
 24 between Justice Black and Justice Frankfurter over judicial balancing, on Scalia's  
 25 debt to this modern debate, *see generally* SAUL CORNELL, THE POLICE POWER AND  
 26 THE AUTHORITY TO REGULATE FIREARMS IN EARLY AMERICA 1–2 (2021),  
 27 [https://www.brennancenter.org/sites/default/files/2021-06/Cornell\\_final.pdf](https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf)  
 28 [<https://perma.cc/J6QD-4YXG>] and Joseph Blocher, *Response: Rights as Trumps of*  
*What?*, 132 HARV. L. REV. 120, 123 (2019).

<sup>37</sup> H. RICHARD UVILLER & WILLIAM G. MERKEL, THE MILITIA AND THE  
 RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT 150 (2002).

<sup>38</sup> Saul Cornell, *Commonplace or Anachronism: The Standard Model, the*  
*Second Amendment, and the Problem of History in Contemporary Constitutional*  
*Theory* 16 CONSTITUTIONAL COMMENTARY 988 (1999).

<sup>39</sup> Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early*  
*American Origins of Gun Control*, 73 FORDHAM L. REV. 487 (2004).

1 **II. FROM MUSKETS TO PISTOLS: CHANGE AND CONTINUITY IN EARLY**  
 2 **AMERICAN FIREARMS REGULATION**

3 24. Guns have been regulated from the dawn of American history.<sup>40</sup> At the  
 4 time *Heller* was decided, there was little scholarship on the history of gun  
 5 regulation and a paucity of quality scholarship on early American gun culture.<sup>41</sup>  
 6 Fortunately, a burgeoning body of scholarship has illuminated both topics,  
 7 deepening scholarly understanding of the relevant contexts needed to implement  
 8 *Bruen*'s framework.<sup>42</sup>

9 25. The common law that Americans inherited from England always  
 10 acknowledged that the right of self-defense was not unlimited but existed within a  
 11 well-delineated jurisprudential framework. The entire body of the common law  
 12 was designed to preserve the peace.<sup>43</sup> Statutory law, both in England and America  
 13 functioned to further secure the peace and public safety. Given these indisputable  
 14 facts, the Supreme Court correctly noted, the right to keep and bear arms was never  
 15 understood to prevent government from enacting a broad range of regulations to  
 16 promote the peace and maintain public safety.<sup>44</sup> To deny such an authority would  
 17 be to convert the Constitution into a suicide pact and not a charter of government.  
 18 In keeping with this principle, the Second Amendment and its state analogues were  
 19 understood to enhance the concept of ordered liberty, not undermine it.<sup>45</sup>

20  
 21  
 22 <sup>40</sup> Robert J. Spitzer, *Gun Law History in the United States and Second*  
*Amendment Rights*, 80 L. & CONTEMP. PROBS. 55 (2017).

23 <sup>41</sup> *Id.*

24 <sup>42</sup> Ruben & Miller, *supra* note 22, at 1.

25 <sup>43</sup> Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 L. & CONTEMP. PROBS. 11 (2017).

26 <sup>44</sup> *McDonald*, 561 U.S. at 785 (noting “[s]tate and local experimentation  
 27 with reasonable firearms regulations will continue under the Second  
 Amendment”).

28 <sup>45</sup> See generally Saul Cornell, *The Long Arc Of Arms Regulation In Public: From Surety To Permitting, 1328-1928*, 55 U.C. DAVIS L. REV. 2547 (2022)

1           26. *Bruen*'s methodology requires judges to distinguish between the  
2 relevant history necessary to understand early American constitutional texts and a  
3 series of myths about guns and regulation that were created by later generations to  
4 sell novels, movies, and guns themselves.<sup>46</sup> Unfortunately, many of these myths  
5 continue to cloud legal discussions of American gun policy and Second  
6 Amendment jurisprudence.<sup>47</sup>

7           27. Although it is hard for many modern Americans to grasp, there was no  
8 comparable societal ill to the modern gun violence problem for Americans to solve  
9 in the era of the Second Amendment. A combination of factors, including the  
10 nature of firearms technology and the realities of living life in small, face-to-face,  
11 and mostly homogenous rural communities that typified many parts of early  
12 America, militated against the development of such a problem. In contrast to  
13 modern America, homicide was not the problem that government firearm policy  
14 needed to address at the time of the Second Amendment.<sup>48</sup>

15           28. The surviving data from New England is particularly rich and has  
16 allowed scholars to formulate a much better understanding of the dynamics of early  
17 American gun policy and relate it to early American gun culture.<sup>49</sup> Levels of gun  
18 violence among those of white European ancestry in the era of the Second  
19 Amendment were relatively low compared to modern America. These low levels of

20 \_\_\_\_\_  
21 <sup>46</sup> PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF*  
*AMERICAN GUN CULTURE* 198-201 (2016).

22 <sup>47</sup> RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN*  
*TWENTIETH-CENTURY AMERICA* 10-16 (1993); JOAN BURBICK, *GUN SHOW NATION:*  
23 *GUN CULTURE AND AMERICAN DEMOCRACY* xvi-xxii (2006).

24 <sup>48</sup> RANDOLPH ROTH, *AMERICAN HOMICIDE* 56, 315 (2009).

25 <sup>49</sup> It is important to recognize that there were profound regional differences in  
early America. See JACK P. GREENE, *PURSUITS OF HAPPINESS: THE SOCIAL*  
26 *DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF*  
*AMERICAN CULTURE* 170-176 (1988). These differences also had important  
consequences for the evolution of American law. See generally David Thomas  
27 Konig, *Regionalism in Early American Law*, in 1 *THE CAMBRIDGE HISTORY OF LAW*  
*IN AMERICA* 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

1 violence among persons of European ancestry contrasted with the high levels of  
2 violence involving the tribal populations of the region. The data presented in  
3 Figure 1 is based on the pioneering research of Ohio-State historian Randolph Roth.  
4 It captures one of the essential facts necessary to understand what fears motivated  
5 American gun policy in the era of the Second Amendment. The pressing problem  
6 Americans faced at the time of the Second Amendment was that citizens were  
7 reluctant to purchase military style weapons which were relatively expensive and  
8 had little utility in a rural society. Americans were far better armed than their  
9 British ancestors, but the guns most Americans owned and desired were those most  
10 useful for life in an agrarian society: fowling pieces and light hunting muskets.<sup>50</sup>  
11 Killing pests and hunting birds were the main concern of farmers, and their choice  
12 of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols  
13 were of limited utility for anyone outside of a small elite group of wealthy,  
14 powerful, and influential men who needed these weapons if they were forced to  
15 face an opponent on the field of honor in a duel, as the tragic fate of Alexander  
16 Hamilton so vividly illustrates.<sup>51</sup>

17 29. Limits in Founding-era firearms technology also militated against the  
18 use of guns as effective tools of interpersonal violence in this period. Eighteenth-  
19 century muzzle-loading weapons, especially muskets, took too long to load and  
20 were therefore seldom used to commit crimes. Nor was keeping guns loaded a  
21 viable option because the black powder used in these weapons was not only  
22 corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles  
23 and muskets hung over the mantle place in early American homes was not primarily

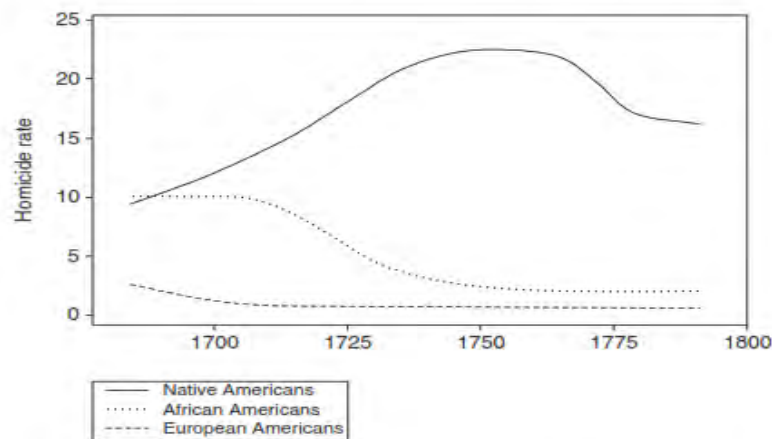
24  
25 <sup>50</sup> Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and*  
26 *Eighteenth Century England and America*, in *A RIGHT TO BEAR ARMS?: THE*  
*CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND*  
*AMENDMENT* (Jennifer Tucker et al. eds., 2019).

27 <sup>51</sup> Joanne B. Freeman, *AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW*  
28 *REPUBLIC* (2001).



a function of aesthetics or the potent symbolism of the hearth, as many today assume. As historian Roth notes: “black powder’s hygroscopic, it absorbs water, it corrodes your barrel, you can’t keep it loaded. Why do they always show the gun over the fireplace? Because that’s the warmest, driest place in the house.”<sup>52</sup> Similar problems also limited the utility of muzzle-loading pistols as practical tools for self-defense or criminal offenses. Indeed, at the time of the Second Amendment, over 90% of the weapons owned by Americans were long guns, not pistols.<sup>53</sup>

**Figure 1**



**Figure 2.3** Unrelated-adult homicide rates in New England by race, 1677–1797 (per 100,000 persons per year).

30. As Roth’s data makes clear, there was not a serious homicide problem looming over debates about the Second Amendment. Nor were guns the primary weapon of choice for those with evil intent during this period.<sup>54</sup> The problem the Founding generation faced was that Americans were reluctant to purchase the type

<sup>52</sup> Randolph Roth, Transcript: *Why is the United States the Most Homicidal in the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013), <https://nij.ojp.gov/media/video/24061#transcript--0>.

<sup>53</sup> Sweeney, *supra* note 50.

<sup>54</sup> HAAG, *supra* note 46.



1 of weapons needed to effectively arm their militias. When the U.S. government  
 2 surveyed the state of the militia's preparedness shortly after Jefferson took office in  
 3 1800, the problem had not been solved. Although Massachusetts boasted above  
 4 80% of its militia armed with military quality weapons, many of the southern states  
 5 lagged far behind, with Virginia and North Carolina hovering at about less than half  
 6 the militia properly armed.<sup>55</sup>

7 31. Government policy, both at the state and federal level, responded to  
 8 these realities by requiring a subset of white citizens, those capable of bearing arms,  
 9 to acquire at their own expense a military quality musket and participate in  
 10 mandatory training and other martial activities.<sup>56</sup> Gun policy in the Founding era  
 11 reflected these realities, and accordingly, one must approach any analogies drawn  
 12 from this period's regulations with some caution when applying them to a modern  
 13 heterogeneous industrial society capable of producing a bewildering assortment of  
 14 firearms whose lethality would have been almost unimaginable to the Founding  
 15 generation.<sup>57</sup> Put another way, laws created for a society without much of a gun  
 16 violence problem enacted at a time of relative gun scarcity, at least in terms of  
 17 militia weapons, have limited value in illuminating the challenges Americans face  
 18 today.

19 32. The other aspect of gun policy that needs to be acknowledged is the  
 20 active role the federal government took in encouraging the manufacturing of  
 21 military arms. The American firearms industry in its infancy was largely dependent  
 22 on government contracts and subsidies. Thus, government had a vested interest in  
 23 determining what types of weapons would be produced.<sup>58</sup> Government regulation

24 <sup>55</sup> Sweeney, *supra* note 50.

25 <sup>56</sup> SAUL CORNELL, A WELL REGULATED MILITIA: THE FOUNDING FATHERS  
 26 AND THE ORIGINS OF GUN CONTROL IN AMERICA (2006) at 68-70.

27 <sup>57</sup> Darrell A. H. Miller & Jennifer Tucker, *Common Use, Lineage, and*  
*Lethality*, 55 U.C. DAVIS L. REV. 2495 (2022).

28 <sup>58</sup> Lindsay Schakenbach Regele, *A Different Constitutionality for Gun*  
 (continued...)

1 of the firearms industry also included the authority to inspect the manufactures of  
 2 weapons and impose safety standards on the industry.<sup>59</sup> Some states opted to tax  
 3 some common weapons to discourage their proliferation.<sup>60</sup>

4 33. The calculus of individual self-defense changed dramatically in the  
 5 decades following the adoption of the Second Amendment.<sup>61</sup> The early decades of  
 6 the nineteenth century witnessed a revolution in the production and marketing of  
 7 guns.<sup>62</sup> The same technological changes and economic forces that made wooden  
 8 clocks and other consumer goods such as Currier and Ives prints common items in  
 9 many homes also transformed American gun culture.<sup>63</sup> These same changes also  
 10 made handguns and a gruesome assortment of deadly knives, including the dreaded  
 11 Bowie knife, more common. The culmination of this gradual evolution in both  
 12 firearms and ammunition technology was the development of Samuel Colt's pistols

13  
 14 *Regulation*, 46 HASTINGS CONST. L.Q. 523, 524 (2019); Andrew J. B. Fagal,  
 15 *American Arms Manufacturing and the Onset of the War of 1812*, 87 NEW ENG. Q.  
 526, 526 (2014).

16 <sup>59</sup> 1814 Mass. Acts 464, An Act In Addition To An Act, Entitled "An Act To  
 17 Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth,"  
 18 ch. 192, § 1 ("All musket barrels and pistol barrels, manufactured within this  
 19 Commonwealth, shall, before the same shall be sold, and before the same shall be  
 20 stocked, be proved by the person appointed according to the provisions of an act . .  
 21 . . ."); § 2 ("That if any person or persons, from and after the passing of this act,  
 22 shall manufacture, within this Commonwealth, any musket or pistol, or shall sell  
 23 and deliver, or shall knowingly purchase any musket or pistol, without having the  
 24 barrels first proved according to the provisions of the first section of this act,  
 25 marked and stamped according the provisions of the first section of the act.")

26 <sup>60</sup> 1858-1859 N.C. Sess. Laws 34-36, Pub. Laws, An Act Entitled Revenue,  
 27 chap. 25, § 27, pt. 15. ("The following subjects shall be annually listed, and be  
 28 taxed the amounts specified: . . . Every dirk, bowie-knife, pistol, sword-cane, dirk-  
 cane and rifle cane, used or worn about the person of any one at any time during the  
 year, one dollar and twenty-five cents. Arms used for mustering shall be exempt  
 from taxation."); *see also* 1866 Ga. Law 27, An Act to authorize the Justices of the  
 Inferior Courts of Camden, Glynn and Effingham counties to levy a special tax for  
 county purposes, and to regulate the same.

<sup>61</sup> Cornell, *supra* note 3 at 745.

<sup>62</sup> Lindsay Schakenbach Regele, *Industrial Manifest Destiny: American  
 Firearms Manufacturing and Antebellum Expansion*, 93 BUS. HIST. REV. 57 (2018).

<sup>63</sup> Sean Wilentz, *Society, Politics, and the Market Revolution*, in THE NEW  
 AMERICAN HISTORY (Eric Foner ed., 1990).

1 around the time of the Mexican-American War.<sup>64</sup> Economic transformation was  
 2 accompanied by a host of profound social changes that gave rise to America's first  
 3 gun violence crisis. As cheaper, more dependable, and easily concealable handguns  
 4 proliferated in large numbers, Americans, particularly southerners, began sporting  
 5 them with alarming regularity. The change in behavior was most noticeable in the  
 6 case of handguns.<sup>65</sup>

7 34. The response of states to the emergence of new firearms that  
 8 threatened the peace was regulation. In short, when confronted by changes in  
 9 technology, consumer behavior, and faced with novel threats to public safety, the  
 10 individual states enacted laws to address these problems. In every instance apart  
 11 from a few outlier cases in the Slave South, courts upheld such limits on the  
 12 unfettered exercise a right to keep and bear arms. The primary limit identified by  
 13 courts in evaluating such laws was the threshold question about abridgement: did  
 14 the law negate the ability to act in self-defense.<sup>66</sup> In keeping with the clear  
 15 imperative hard-wired into the Second Amendment, states singled out weapons that  
 16 posed a particular danger for regulation or prohibition. Responding in this fashion  
 17 was entirely consistent with Founding-era conceptions of ordered liberty, the  
 18 Second Amendment and comparable state arms bearing provisions.

19 35. Not all guns were treated equally by the law in early America. Some  
 20 guns were given heightened constitutional protection and others were treated as  
 21 ordinary property subject to the full force of state police power authority.<sup>67</sup> The  
 22 fact that some weapons were treated in the same fashion as other forms of property

23 <sup>64</sup> WILLIAM N. HOSLEY, *COLT: THE MAKING OF AN AMERICAN LEGEND* (1st  
 24 ed. 1996) at 23.

25 <sup>65</sup> Cornell, *supra* note 9, at 1716.

26 <sup>66</sup> On southern gun rights exceptionalism, see Eric M. Ruben & Saul Cornell,  
*Firearms Regionalism and Public Carry: Placing Southern Antebellum Case Law*  
*in Context*, 125 YALE L.J. F. 121, 128 (2015).

27 <sup>67</sup> Saul Cornell, *History and Tradition or Fantasy and Fiction: Which*  
 28 *Version of the Past Will the Supreme Court Choose in NYSRPA v. Bruen?*, 49  
 HASTINGS CONST. L.Q. 145 (2022).

1 did not mean government authority over them was unlimited any more than it  
2 implied that people's homes, chattels, or other forms of property were somehow not  
3 protected by law. Property rights in early America were highly venerated, but they  
4 were always subject to forms of regulation by the people themselves acting through  
5 their legislatures. Regulating guns and gun powder were basic exercises of the  
6 sovereignty of the people. The decision of legislatures to determine which  
7 dangerous weapons were exempted from the full protection of the constitutional  
8 right to keep and bear arms flowed inexorably out of the police power enjoyed by  
9 states, localities, and in some limited situations the Federal government when  
10 regulating land or property under its jurisdiction.

11 **III. TECHNOLOGY, MARKETING, CONSUMER BEHAVIOR, AND REGULATION:**  
12 **THE AMERICAN PARADIGM OF GUN REGULATION EMERGES**

13 36. Political scientist Robert Spitzer's overview of the history of firearms  
14 regulation underscores the dynamic governing this important tradition: "The lesson  
15 of gun regulation history here is that new technologies bred new laws when  
16 circumstances warranted."<sup>68</sup> States and localities have regulated gunpowder and  
17 arms since the earliest days of the American Republic. The statutes at issue in this  
18 case fit squarely within this long-established tradition of firearms regulation in  
19 America, beginning in the colonial period and stretching across time to the  
20 present.<sup>69</sup> The adaptability of state and local police power provided the flexibility  
21 governments needed to deal with the problems created by changes in firearms  
22 technology and gun culture.

23 37. The claim that firearms capable of firing more than ten rounds without  
24 reloading "are nothing new" ignores the history of firearms technology, production,  
25 and use. In 1791, virtually all firearms were single-shot, muzzle-loading black  
26

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27 <sup>68</sup> *Supra* note 39.

28 <sup>69</sup> *Supra* note 40.

1 powder weapons. At that time, guns capable of firing more than a single round  
2 could best be described as exotic.

3 38. For example, the Girondoni rifle was a commercial failure. There are  
4 no mentions of the Girondoni rifle in the thousands of documents collected in *The*  
5 *Founders Archive Online*, or the hundreds of thousands of documents amassed in  
6 the *BYU Corpora of Founding Era English*. Given these deafening silences in the  
7 historical record it strains credulity to argue that ordinary Americans at the time of  
8 the Second Amendment were thinking about such weapons as the Bill of Rights  
9 was framed.

#### 10 **IV. THE POLICE POWER AND FIREARMS REGULATION**

11 39. The 1776 Pennsylvania Constitution, the first revolutionary  
12 constitution to assert a right to bear arms, preceded the assertion of this right by  
13 affirming a more basic rights claim: “That the people of this State have the sole,  
14 exclusive and inherent right of governing and regulating the internal police of the  
15 same.”<sup>70</sup> The phrase “internal police” had already become common, particularly in  
16 laws establishing towns and defining the scope of their legislative authority enjoyed  
17 by representative bodies to craft laws to promote public health and safety.<sup>71</sup> By the  
18 early nineteenth century, the term “police” was a fixture in American law.<sup>72</sup> Thus,  
19 an 1832 American encyclopedia confidently asserted that police, “in the common  
20

21 <sup>70</sup> PA. CONST. OF 1776, Ch. I, art iii.

22 <sup>71</sup> For other examples of constitutional language similar to Pennsylvania’s  
23 provision, N.C. CONST. OF 1776, DECLARATION OF RIGHTS, art. II; VT. CONST. OF  
24 1777, DECLARATION OF RIGHTS, art. IV. For other examples of this usage, *see* An  
25 Act Incorporating the residents residing within limits therein mentioned, *in* 2 NEW  
26 YORK LAWS 158 (1785) (establishing the town of Hudson, NY); An Act to  
27 incorporate the Town of Marietta, *in* LAWS PASSED IN THE TERRITORY NORTHWEST  
28 OF THE RIVER OHIO 29 (1791). For later examples, *see* 1 STATUTES OF THE STATE OF  
NEW JERSEY 561 (rev. ed. 1847); 1 SUPPLEMENTS TO THE REVISED STATUTES. LAWS  
OF THE COMMONWEALTH OF MASSACHUSETTS, PASSED SUBSEQUENTLY TO THE  
REVISED STATUTES: 1836 TO 1849, INCLUSIVE 413 (Theron Metcalf & Luther S.  
Cushing, eds. 1849).

<sup>72</sup> ERNST FREUND, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL  
RIGHTS 2, n.2 (1904).

1 acceptance of the word, in the U. States and England, is applied to the municipal  
2 rules, institutions and officers provided for maintaining order, cleanliness &c.”<sup>73</sup>

3 The Founding era’s conception of a basic police right located in legislatures was  
4 transmuted during the Marshall Court’s era into the judicial doctrine of the police  
5 power and would become a fixture in American law.

6 40. The power to regulate firearms and gunpowder has always been  
7 central to the police power and historically was shared among states, municipalities,  
8 and the federal government when it was legislating conduct on federal land and in  
9 buildings.<sup>74</sup> The adoption of the Constitution and the Bill of Rights did not deprive  
10 states of their police powers. Indeed, if it had, the Constitution would not have  
11 been ratified and there would be no Second Amendment today. Ratification was  
12 only possible because Federalists offered Anti-Federalists strong assurances that  
13 nothing about the new government threatened the traditional scope of the individual  
14 state’s police power authority, including the authority to regulate guns and gun  
15 powder.<sup>75</sup>

16 41. Federalists and Anti-Federalists bitterly disagreed over many legal  
17 issues, but this one point of accord was incontrovertible. Brutus, a leading Anti-  
18 Federalist, emphatically declared that “it ought to be left to the state governments to  
19 provide for the protection and defence [sic] of the citizen against the hand of private  
20 violence, and the wrongs done or attempted by individuals to each other.”<sup>76</sup>

21 Federalist Tench Coxe concurred, asserting that “[t]he states will regulate and  
22 administer the criminal law, exclusively of Congress.” States, he assured the  
23 American people during ratification, would continue to legislate on all matters

24 <sup>73</sup> 10 ENCYCLOPEDIA AMERICANA 214 new edition (Francis Lieber ed.).

25 <sup>74</sup> Harry N. Scheiber, *State Police Power*, in 4 ENCYCLOPEDIA OF THE  
26 AMERICAN CONSTITUTION 1744 (Leonard W. Levy et al. eds., 1986).

27 <sup>75</sup> SAUL CORNELL, THE OTHER FOUNDERS: ANTIFEDERALISM AND THE  
28 DISSENTING TRADITION IN AMERICA, 1788-1828 139 (1999).

<sup>76</sup> Brutus, *Essays of Brutus VII*, reprinted in 2 THE COMPLETE  
ANTIFEDERALIST 358, 400–05 (Herbert J. Storing ed., 1981).



1 related to the police power “such as unlicensed public houses, nuisances, and many  
 2 other things of the like nature.”<sup>77</sup> State police power authority was at its pinnacle in  
 3 matters relating to guns or gun powder.<sup>78</sup> Thus, Massachusetts enacted a law that  
 4 prohibited storing a loaded weapon in a home, a firearms safety law that recognized  
 5 that the unintended discharge of firearms posed a serious threat to life and limb.<sup>79</sup>  
 6 New York City even granted broad power to the government to search for gun  
 7 powder and transfer powder to the public magazine for safe storage:

8       it shall and may be lawful for the mayor or recorder, or any two  
 9       Alderman of the said city, upon application made by any inhabitant  
 10       or inhabitants of the said city, and upon his or their making oath of  
 11       reasonable cause of suspicion (of the sufficiency of which the said  
 12       mayor or recorder, or Aldermen, is and are to be the judge or  
 13       judges) to issue his or their warrant or warrants, under his or their  
 14       hand and seal, or hands and seals for searching for such gun  
 15       powder, in the day time, in any building or place whatsoever.<sup>80</sup>

16       42. The power to regulate firearms and gunpowder was therefore at the  
 17       very core of the police power and inheres in both states and local municipalities.  
 18       The application of the police power to firearms and ammunition was singled out as  
 19       the quintessential example of state police power by Chief Justice John Marshall in  
 20       his 1827 discussion of laws regulating gun powder in *Brown v. Maryland*.<sup>81</sup> This  
 21       was so even though gunpowder was essential to the operation of firearms at that

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22       <sup>77</sup> Tench Coxe, A Freeman, *Pa. Gazette*, Jan. 23, 1788, reprinted in FRIENDS  
 23       OF THE CONSTITUTION: WRITINGS OF THE “OTHER” FEDERALISTS 82 (Colleen A.  
 24       Sheehan & Gary L. McDowell eds., 1998).

25       <sup>78</sup> CORNELL, THE POLICE POWER, *supra* note 36.

26       <sup>79</sup> Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to  
 27       the Several Acts Already Made for the Prudent Storage of Gun Powder within the  
 28       Town of Boston, § 2.

29       <sup>80</sup> An Act to Prevent the Storing of Gun Powder, within in Certain Parts of  
 30       New York City, LAWS OF THE STATE OF NEW-YORK, COMPRISING THE  
 31       CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION,  
 32       FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE 191-2 (Thomas Greenleaf,  
 33       ed., 1792).

34       <sup>81</sup> 25 U.S. (12 Wheat.) 419, 442-43 (1827) (“The power to direct the removal  
 35       of gunpowder is a branch of the police power”).



1 time and gun powder regulations necessarily affected the ability of gun owners to  
2 use firearms for self-defense, even inside the home.

3 43. A slow process of judicializing this concept of police, transforming the  
4 Founding era's idea of a "police right" into a judicially enforceable concept of the  
5 "police power" occurred beginning with the Marshall Court and continuing with the  
6 Taney Court.<sup>82</sup>

7 44. Nor was Chief Justice John Marshall unique in highlighting the  
8 centrality of this idea to American law.<sup>83</sup> The ubiquity of the police power  
9 framework for evaluating the constitutionality of legislation regarding firearms  
10 reflected the centrality of this approach to nearly every question of municipal  
11 legislation touching health or public safety in early America.<sup>84</sup> Massachusetts  
12 Judge Lemuel Shaw, one of the most celebrated state jurists of the pre-Civil War era  
13 elaborated this point in his influential 1851 opinion in *Commonwealth v. Alger*, a  
14 decision that became a foundational text for lawyers, judges, and legislators looking  
15 for guidance on the meaning and scope of the police power. Shaw described the  
16 police power in the following manner:

17  
18 <sup>82</sup> Eras of Supreme Court history are typically defined by the tenure of the  
19 Chief Justice. The Marshall Court Period covered the years 1801-1835. For a brief  
20 overview, see "The Marshall Court, 1801-1835", SUPREME COURT HISTORICAL  
21 SOCIETY (last visited Oct. 5, 2022), [https://supremecourthistory.org/history-of-the-court-history-of-the-courts-the-marshall-](https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/)  
22 [court-1801-1835/](https://supremecourthistory.org/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/). The Taney Court period covered the years 1836-1864. See "The  
23 Taney Court, 1836-1864", SUPREME COURT HISTORICAL SOCIETY (last visited Oct.  
24 5, 2022), [https://supremecourthistory.org/history-of-the-court-history-of-the-](https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/)  
25 [courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/](https://supremecourthistory.org/history-of-the-court-history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/).

26 <sup>83</sup> In the extensive notes he added as editor of the 12<sup>th</sup> edition of James Kent's  
27 classic *Commentaries on American Law*, Oliver Wendell Holmes, Jr., wrote that  
28 regulation of firearms was the *locus classicus* of the police power. See 2 JAMES  
KENT COMMENTARIES ON AMERICAN LAW (340) 464 n.2 (Oliver Wendell Holmes,  
Jr., ed. 12 ed. 1873).

<sup>84</sup> FREUND, *supra* note 72, at 2, n.2 (1904). WILLIAM J. NOVAK, THE PEOPLE'S  
WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA (1996) at 65-  
66; Christopher Tomlins, *To Improve the State and Condition of Man: The Power  
to Police and the History of American Governance*, 53 BUFF. L. REV. 1215 (2005);  
DUBBER, *supra* note 12, at 82-87.

1 [T]he power vested in the legislature by the constitution, to make,  
2 ordain and establish all manner of wholesome and reasonable laws,  
3 statutes and ordinances, either with penalties or without, not  
4 repugnant to the constitution, as they shall judge to be for the good  
5 and welfare of the commonwealth, and of the subjects of the same.  
6 It is much easier to perceive and realize the existence and sources  
7 of this power, than to mark its boundaries, or prescribe limits to its  
8 exercise. There are many cases in which such a power is exercised  
9 by all well-ordered governments, and where its fitness is so  
10 obvious, that all well regulated minds will regard it as reasonable.  
11 Such are the laws to prohibit the use of warehouses for the storage  
12 of gunpowder.<sup>85</sup>

13 45. In short, there was unanimous agreement among leading antebellum  
14 jurists, at both the federal and state level, that the regulation of arms and gun  
15 powder was at the core of the police power enjoyed by legislatures. Indeed, the  
16 scope of government power to regulate, prohibit, and inspect gunpowder has been  
17 among the most far reaching of any exercise of the police power throughout  
18 American history.<sup>86</sup> A Maine law enacted in 1821 authorized town officials to enter  
19 any building in town to search for gun powder:

20 Be it further enacted, That it shall, and may be lawful for any one  
21 or more of the selectmen of any town to enter any building, or  
22 other place, in such town, to search for gun powder, which they  
23 may have reason to suppose to be concealed or kept, contrary to  
24 the rules and regulations which shall be established in such town,  
25 according to the provisions of this Act, first having obtained a  
26 search warrant therefore according to law.<sup>87</sup>

27 46. No jurisdiction enumerated the full contours of the police power they  
28 possessed in a single text or in a single statute or ordinance. Rather, it was well  
understood that the exercise of this power would need to adapt to changing

25 <sup>85</sup> *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53 (1851). For another good  
26 discussion of how state jurisprudence treated the concept, see *Thorpe v. Rutland*, 27  
Vt. 140, 149 (1855).

27 <sup>86</sup>CORNELL, THE POLICE POWER, *supra* note 36.

28 <sup>87</sup> 1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the  
Safe Keeping of Gun Powder, chap. 25, § 5.

1 circumstances and new challenges as they emerged. This conception of law was  
2 familiar to most early American lawyers and judges who had been schooled in  
3 common law modes of thinking and analysis.<sup>88</sup> Throughout the long sweep of  
4 Anglo-American legal history, government applications of the police power were  
5 marked by flexibility, allowing local communities to adapt to changing  
6 circumstances and craft appropriate legislation to deal with the shifting challenges  
7 they faced.<sup>89</sup> This vision of the police power was articulated forcefully by the  
8 Supreme Court in the License Cases when Justice McClean wrote this about the  
9 scope of state police power:

10 It is not susceptible of an exact limitation, but must be exercised  
11 under the changing exigencies of society. In the progress of  
12 population, of wealth, and of civilization, new and vicious  
13 indulgences spring up, which require restraints that can only be  
14 imposed by new legislative power. When this power shall be  
exerted, how far it shall be carried, and where it shall cease, must  
mainly depend upon the evil to be remedied.<sup>90</sup>

15 47. One of the most important early American gun-related cases discussed  
16 in *Heller*, *State v. Reid*, offers an excellent illustration of the way police power  
17 jurisprudence was used by antebellum judges to adjudicate claims about gun rights  
18 and the right of the people to regulate.<sup>91</sup> The case is a classic example of  
19 antebellum police power jurisprudence. The Supreme Court of Alabama evaluated  
20 the statute by focusing on the scope of state police power authority over guns. “The  
21 terms in which this provision is phrased,” the court noted, “leave with the  
22 Legislature the authority to adopt such regulations of police, as may be dictated by  
23

24 \_\_\_\_\_  
25 <sup>88</sup> KUNAL M. PARKER, COMMON LAW HISTORY, AND DEMOCRACY IN  
AMERICA, 1790-1900: LEGAL THOUGHT BEFORE MODERNISM 147-148 (2013).

26 <sup>89</sup> William J. Novak, *A State of Legislatures*, 40 POLITY 340 (2008).

27 <sup>90</sup> *License Cases (Thurlow v. Massachusetts; Fletcher v. Rhode Island; Peirce*  
*v. New Hampshire)*, 5 How. (46 U.S.) 504, 592 (1847).

28 <sup>91</sup> See *State v. Reid*, 1 Ala. 612, 612 (1840).

1 the safety of the people and the advancement of public morals.”<sup>92</sup> In the court’s  
 2 view, the regulation of arms was at the very core of state police power.<sup>93</sup> The  
 3 judicial determination was straight forward: was the challenged law a legitimate  
 4 exercise of the police power or not?

5 **V. RECONSTRUCTION AND THE EXPANSION OF STATE POLICE POWER TO**  
 6 **REGULATE FIREARMS (1863-1877)**

7 48. Founding-era constitutions treated the right of the people to regulate  
 8 their internal police separately from the equally important right of the people to  
 9 bear arms. These two rights were separate in the Founding era but were mutually  
 10 reinforcing: both rights were exercised in a manner that furthered the goal of  
 11 ordered liberty. Reconstruction-era constitutions adopted a new textual formulation  
 12 of the connection between these two formerly distinct rights, fusing the two  
 13 together as one single constitutional principle. This change reflected two profound  
 14 transformations in American politics and law between 1776 and 1868. First, the  
 15 judicial concept of police power gradually usurped the older notion of a police right  
 16 grounded in the idea of popular sovereignty. As a result, state constitutions no  
 17 longer included positive affirmations of a police right. Secondly, the constitutional  
 18 “mischief to be remedied” had changed as well.<sup>94</sup> Constitution writers in the era of

19 \_\_\_\_\_  
 20 <sup>92</sup> *Id.* at 616.

21 <sup>93</sup> Apart from rare outlier decisions, such as *Bliss v. Commonwealth*, 12 Ky.  
 22 (2 Litt.) 90, 92 (1822) courts employed a police power framework to adjudicate  
 claims about the scope of state power to regulate arms. For a useful discussion of  
*Bliss* in terms of the police power, see FREUND, *supra* note 72, at 91.

23 <sup>94</sup> The mischief rule was first advanced in *Heydon’s Case*, (1584) 76 Eng.  
 24 Rep. 637 (KB) — the legal principle that the meaning of a legal text was shaped by  
 25 an understanding of the state of the common law prior to its enactment and the  
 26 mischief that the common law had failed to address and that new legislation had  
 intended to remedy — continued to shape Anglo-American views of statutory  
 27 construction, and legal interpretation more generally, well into the nineteenth  
 28 century. For Blackstone’s articulation of the rule, see 1 BLACKSTONE, *supra* note 8,  
 at \*61. The relevance of common law modes of statutory construction to  
 interpreting antebellum law, including the mischief rule, is clearly articulated in 1  
 ZEPHANIAH SWIFT, A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT 11 (New  
 Haven, S. Converse 1822). For a modern scholarly discussion of the rule, see  
 Samuel L. Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 970 (2021).

1 the American Revolution feared powerful standing armies and sought to entrench  
2 civilian control of the military. By contrast, constitution writers in the era of the  
3 Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart  
4 Kings using their standing army to oppress American colonists. In place of these  
5 ancient fears, a new apprehension stalked Americans: the proliferation of  
6 especially dangerous weapons and the societal harms they caused.<sup>95</sup>

7 49. The new language state constitutions employed to describe the right to  
8 bear arms enacted during Reconstruction responded to these changed circumstances  
9 by adopting a new formulation of the venerable right codified in 1776, linking the  
10 right to bear arms inextricably with the states broad police power to regulate  
11 conduct to promote health and public safety.<sup>96</sup> For example, the 1868 Texas  
12 Constitution included new language that underscored the indissoluble connection  
13 that Anglo-American law had long recognized between the right to keep and bear  
14 arms and regulation of guns. “Every person shall have the right to keep and bear  
15 arms, in the lawful defence of himself or the government, under such regulations as  
16 the Legislature may prescribe.”<sup>97</sup> Nor was Texas an outlier in this regard. Sixteen  
17 state constitutions adopted during this period employed similarly expansive  
18 language.<sup>98</sup> Millions of Americans living in the newly organized western states and  
19 newly reconstructed states of the former confederacy adopted constitutional  
20 provisions that reflected this new formulation of the right to bear arms. Thus,

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21  
22 <sup>95</sup> See *McDonald*, 561 U.S. at 767–68

23 <sup>96</sup> Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth*  
24 *Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War*  
*America*, 55 U.C. DAVIS L. REV. 65 (2022).

25 <sup>97</sup> TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional  
26 provision enacted after the Civil War, see IDAHO CONST. OF 1889, art. I, § 11 (“The  
27 people have the right to bear arms for their security and defense; but the legislature  
shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6  
28 (“[T]he people have the right to bear arms for their security and defense, but the  
legislature may regulate the exercise of this right by law.”).

<sup>98</sup> Cornell, *supra* note 96, at 75–76.

1 millions of Americans were living under constitutional regimes that acknowledged  
2 that the individual states' police power authority over firearms was at its apogee  
3 when regulating guns.<sup>99</sup>

4 50. This expansion of regulation was entirely consistent with the  
5 Fourteenth Amendment's emphasis on the protection of rights and the need to  
6 regulate conduct that threatened the hard-won freedoms of recently free people of  
7 the South and their Republican allies. The goals of Reconstruction were therefore  
8 intimately tied to the passage and enforcement of racially neutral gun regulations.<sup>100</sup>

9 51. Reconstruction ushered in profound changes in American law, but it  
10 did not fundamentally alter the antebellum legal view that a states' police powers  
11 were rooted in the people's right to make laws to protect the peace and promote  
12 public safety. Nor did Reconstruction challenge the notion that these powers were  
13 at their zenith when dealing with guns and gun powder. In fact, the Republicans  
14 who wrote the Fourteenth Amendment were among the most ardent champions of  
15 an expansive view of state police power. As heirs to the antebellum Whig vision of  
16 a well-regulated society, Reconstruction-era Republicans used government power  
17 aggressively to protect the rights of recently freed slaves and promote their vision  
18 of ordered liberty.<sup>101</sup>

19 52. Indeed, the passage of the Fourteenth Amendment was premised on the  
20 notion that the individual states would not cede their police power authority to the  
21 federal government. The author of Section One of the Fourteenth Amendment,  
22 John Bingham, reassured voters that the states would continue to bear the primary  
23

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24 <sup>99</sup> *Id.*

25 <sup>100</sup> Brennan Gardner Rivas, *Enforcement of Public Carry Restrictions: Texas as a Case Study*, 55 U.C. DAVIS L. REV. 2603 (2022).

26 <sup>101</sup> Robert J. Kaczorowski, *Congress's Power to Enforce Fourteenth*  
27 *Amendment Rights: Lessons from Federal Remedies the Framers Enacted*, 42  
28 HARV. J. ON LEGIS. 187, 205 (2005); Christopher Tomlins, *To Improve the State and Condition of Man: The Power to Police and the History of American Governance* 53 BUFFALO L. REV. 1215 (2005-2006).



1 responsibility for “local administration and personal security.”<sup>102</sup> As long as state  
 2 and local laws were racially neutral and favored no person over any other, the  
 3 people themselves, acting through their representatives, were free to enact  
 4 reasonable measures necessary to promote public safety and further the common  
 5 good.<sup>103</sup>

6 53. It would be difficult to understate the impact of this new paradigm for  
 7 gun regulation on post-Civil War legislation. Across the nation legislatures took  
 8 advantage of the new formulation of the right to bear arms included in state  
 9 constitutions and enacted a staggering range of new laws to regulate arms. Indeed,  
 10 the number of laws enacted skyrocketed, increasing by over four hundred percent  
 11 from antebellum levels.<sup>104</sup> Not only did the number of laws increase, but the  
 12 number of states and localities passing such laws also expanded.<sup>105</sup>

13 54. Henry Campbell Black, the author of *Black’s Law Dictionary*,  
 14 described the police power as “inalienable” and echoed the view of a long line of  
 15 jurists who noted that the scope of the power was not easily defined and the  
 16 determination of its limits was best left to courts on a case-by-case basis.<sup>106</sup> Indeed,  
 17 even the most ardent critics of the police power, such as conservative legal scholar  
 18 Christopher G. Tiedeman, acknowledged that “police power of the State extends to  
 19  
 20  
 21

22 <sup>102</sup> John Bingham, *Speech*, CINCINNATI DAILY GAZETTE (Sept. 2, 1867), as  
 23 quoted in Saul Cornell and Justin Florence, *The Right to Bear Arms in the Era of*  
 24 *the Fourteenth Amendment: Gun Rights or Gun Regulation*, 50 SANTA CLARA L.  
 25 REV. 1043, 1058 (2010).

26 <sup>103</sup> For a discussion of how the courts wrestled with the meaning of the  
 27 Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM*  
 28 *POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* 173-4 (1998).

<sup>104</sup> See Spitzer, *supra* note 40, at 59–61 tbl. 1.

<sup>105</sup> *Id.*

<sup>106</sup> HENRY CAMPBELL BLACK, *HANDBOOK OF CONSTITUTIONAL LAW*, 334–344  
 (2d ed., 1897).



1 the protection of the lives, limbs, health, comfort and quiet of all persons, and the  
2 protection of all property within the State.”<sup>107</sup>

3 55. In keeping with the larger goals of Reconstruction, Republicans sought  
4 to protect the rights of African Americans to bear arms but were equally insistent on  
5 enacting strong racially neutral regulations aimed at public safety. Violence  
6 directed against African Americans, particularly the campaign of terror orchestrated  
7 by white supremacist para-military groups prompted Republican dominated  
8 legislatures in the Reconstruction South to pass a range of racially neutral gun  
9 regulations.<sup>108</sup> The racially neutral gun laws enacted by Republicans were in part a  
10 reaction to the discriminatory black codes passed by neo-confederate legislatures  
11 earlier in Reconstruction. The Black Codes violated the Second Amendment, but  
12 the wave of firearms legislation passed by Republican controlled state legislatures  
13 in the South were consciously crafted to honor the Second Amendment and protect  
14 individuals from gun violence.<sup>109</sup>

15 56. The laws enacted during Reconstruction underscore the fact that robust  
16 regulation of firearms during Reconstruction was not a novel application of the  
17 police power, but an expansion and continuation of antebellum practices.  
18 Moreover, these efforts illustrated a point beyond dispute: the flexibility inherent in  
19 police power regulations of guns. American states had regulated arms since the  
20

21  
22 <sup>107</sup> CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE  
POLICE POWER IN THE UNITED STATES 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27  
Vt. 140, 149-50 (1854)).

23 <sup>108</sup> Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in*  
24 *Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas,  
25 *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in*  
*Texas, 1836-1900*, 121 SOUTHWESTERN QUARTERLY 284 (2020).

26 <sup>109</sup> See Darrell A. H. Miller, *Peruta, The Home-Bound Second Amendment,*  
27 *and Fractal Originalism*, 127 HARV. L. REV. 238, 241 (2014); see also Robert J.  
Kaczorowski, *Congress’s Power to Enforce Fourteenth Amendment Rights: Lessons*  
28 *from Federal Remedies the Framers Enacted*, 42 HARV. J. ON LEGIS. 187, 205  
(2005) (discussing Republican use of federal power to further their aims, including  
to enforce the Fourteenth Amendment).

dawn of the republic and Reconstruction simply renewed America's commitment to the idea of well-regulated liberty.

## **VI. LARGE-CAPACITY MAGAZINES, THE POLICE POWER, AND THE LATEST FACE OF TERROR**

57. Another major inflection point in the history of firearms regulation emerged in the context of the debate on assault weapons and large-capacity magazines, which were closely connected to the rise of mass shootings in the last decades of the twentieth century.<sup>110</sup> California began restricting large-capacity magazines in 2000.<sup>111</sup> Proposals to ban large-capacity magazines are part of a larger national movement to deal with the carnage caused by high capacity, high velocity weapons. The effort to ban such weapons and accessories parallels earlier efforts to deal with machine guns and semi-automatic weapons during the 1920s.<sup>112</sup>

58. Legislative efforts to ban these weapons fit squarely within the long Anglo-American tradition of limiting public access to weapons capable of provoking terror. During America's first gun violence crisis in the Jacksonian era, states targeted pistols that were easily concealed, and in the New Deal era, states singled out gangster weapons such as the notorious Thompson sub-machine gun (or "Tommy Gun"), treating these weapons as sufficiently dangerous or unusual to warrant extensive regulation, or prohibition. The same imperatives and constitutional logic guided both regulatory regimes.<sup>113</sup>

59. The history of the AR-15 illustrates that the earlier dynamic governing firearms regulation established in the nineteenth-century continues to shape

<sup>110</sup> Allen Rostron, *Style, Substance, and the Right to Keep and Bear Assault Weapons*, 40 CAMPBELL L. REV. 301 (2018); Jaclyn Schildkraut et.al., *Mass Shootings, Legislative Responses, and Public Policy: An Endless Cycle of Inaction*, 68 EMORY L.J. 1043 (2020).

<sup>111</sup> 1999 Cal. Stat. 1781, §§ 3, 3.5 (S.B. 23) (now codified at Cal. Penal Code § 32310(a)).

<sup>112</sup> Spitzer, *supra* note 40.

<sup>113</sup> *Id.*

1 American public policy and law. Regulation of firearms follows a well-worn path.  
 2 Technological innovation is only part of this equation. In addition, weapons must  
 3 also achieve sufficient market penetration to create a potential for criminal abuse.  
 4 At this point legislatures attempt to find a means to address the problem posed by  
 5 these weapons without trenching on constitutionally protected liberties.<sup>114</sup>

6 60. Understanding the marketing strategies tying these weapons to the  
 7 military makes clear that efforts to regulate these weapons by using these same  
 8 features is hardly cosmetic. Moreover, focusing exclusively on technology and  
 9 ignoring the social history of these weapons, their popularity and potential for  
 10 abuse, misses an important point about the history of firearms technology and  
 11 government regulation. The history and tradition of arms regulation has always  
 12 recognized that weapons that had the ability to inspire *terrorem populi* is a  
 13 legitimate justification for regulation. The perpetrator of the Sandy Hook  
 14 Elementary Mass Shooting used a Bushmaster AR-15-type weapon that was  
 15 marketed with a slogan that traded on hyper-aggressive forms of toxic masculinity:  
 16 “Consider Your Man Card Reissued.”<sup>115</sup>

17 61. There is little disputing the fact that, despite protestations by gun  
 18 rights advocates and industry executives that these weapons are merely “sporting  
 19 rifles,” the marketing campaigns used to sell these tells a different story. The  
 20 success of these weapons commercially was inextricably linked to marketing  
 21 strategies that tied these weapons to their origins in the military. These sales  
 22 strategies deliberately evoked images of military assault capabilities.<sup>116</sup> The

23 <sup>114</sup> *Id.*

24 <sup>115</sup> ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA 128-135 (Boston:  
 25 Northeastern Univ. Press 2001); Cornell and DeDino, *supra* note 39.

26 <sup>116</sup> Mark Berman & Todd C. Frankel, *Companies made more than \$1B*  
 27 *selling powerful guns to civilians, report says House oversight committee accused*  
 28 *gun manufacturers of “manipulative marketing campaigns” and profiting off*  
*violence*, WASHINGTON POST (July 27, 2022, 7:19 PM),  
<https://www.washingtonpost.com/national-security/2022/07/27/companies-made-more-than-1b-selling-powerful-guns-civilians-report-says/>.

1 advertisement from two popular arms manufacturers pictured below are illustrative  
 2 of these campaigns.<sup>117</sup> Ruger explicitly employs the term “Tactical Rifle” and Sig  
 3 Sauer’s choice of imagery unambiguously links its weapons to images of military  
 4 close quarter combat.



22 62. In the case of large-capacity magazines, the example of the Newtown  
 23 massacre is instructive. Bushmaster developed an advertising campaign that  
 24 included product placement in violent video games targeting young men. The

25  
 26 <sup>117</sup> CAROLYN MALONEY, SUPPLEMENTAL MEMORANDUM: THE COMMITTEE’S  
 27 INVESTIGATION INTO GUN INDUSTRY PRACTICES AND PROFITS (JUL. 27, 2022),  
 28 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.27%20Supplemental%20MEMO%20for%20the%207-27-2022%20FC%20Gun%20Manufacturer%20Hearing.pdf>.

1 image below shows a used magazine retrieved from the floor of Sandy Hook  
 2 Elementary School and a similar magazine from a popular violent video game.<sup>118</sup>



13 63. *Bruen* did not address these technology-focused arguments. The New  
 14 York law in question singled out handguns, not large-capacity magazines. From  
 15 the perspective of text, history, and tradition, the key legal fact is that that these  
 16 weapons are perceived by important segments of the public as weapons capable of  
 17 provoking a terror.<sup>119</sup> Firearms manufacturers created a type of weapon that could  
 18 receive high capacity magazines and marketed their products with a clear  
 19 demographic in mind, stressing characteristics and cultural associations that tied  
 20 them to war and then used these associations to effectively market them. The fact

21  
 22 <sup>118</sup> Rick Rojas, Karen Zraick and Troy Closson, *Sandy Hook Families Settle*  
 23 *with Gunmaker for 73 Million Dollars*, NEW YORK TIMES, published Feb. 15,  
 24 2022, updated Feb. 17, 2022,  
<https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html>.

25 <sup>119</sup> Mass shootings have been rendered more deadly by the proliferation of  
 26 assault weapons, see John Donahue III & Theodora Boulouta, *The Assault Weapon*  
 27 *Ban Saved Lives*, STANFORD LAW SCHOOL BLOGS (Oct. 15, 2019),  
 28 <https://law.stanford.edu/2019/10/15/the-assault-weapon-ban-saved-lives/>. For the  
 most recent assessment of the impact of assault weapons on the American gun  
 violence problem, see Christopher S. Koper et. al., *Criminal Use of Assault*  
*Weapons and High-Capacity Semiautomatic Firearms: An Updated Examination of*  
*Local and National Sources*, 95 J. URB. HEALTH 313 (2018).



1 that a successful marketing strategy earned gun companies significant profits is a  
 2 fact that contradicts the claims of gun rights advocates these magazines are no  
 3 different than other magazines available to consumers. If that were true, then gun  
 4 companies would have abandoned these marketing strategies long ago and replaced  
 5 them with something more effective. It would be illogical and run counter to the  
 6 most basic principles of Anglo-American law to argue that people themselves are  
 7 powerless to regulate these magazines to mitigate the threats they pose to peace and  
 8 public safety. The appeal of these magazines and their contribution to gun violence  
 9 are two sides of the same coin.<sup>120</sup> A government's ability to address the negative  
 10 effects of these weapons is well within the scope of its police powers, as historically  
 11 understood.

## 12 VII. BRUEN'S FRAMEWORK AND MODERN LARGE-CAPACITY MAGAZINES

13 64. The power to regulate and in some cases prohibit dangerous or unusual  
 14 weapons has always been central to the police power authority of states and  
 15 localities. At different moments in American history communities have deemed  
 16 categories of weapons to be especially dangerous and have regulated them, and  
 17 when it appeared necessary enacted bans on some types of weapons. Such  
 18 determinations were not made based on technological features in isolation but  
 19 reflected the ancient common law tradition of singling out weapons capable of  
 20 producing a terror. Such weapons undermined the peace and the constitutional  
 21 imperative embedded in the text of the Second Amendment to protect the security  
 22 of a free state. Defining exactly which category of weapons have fallen outside of

23 <sup>120</sup> Polly Mosendz, *Why Gunmakers Would Rather Sell AR-15s Than*  
 24 *Handguns*, BLOOMBERG (June 20, 2018, 3:00 AM),  
 25 [https://www.bloomberg.com/news/articles/2018-06-20/why-gunmakers-would-](https://www.bloomberg.com/news/articles/2018-06-20/why-gunmakers-would-rather-sell-ar-15s-than-handguns)  
 26 [rather-sell-ar-15s-than-handguns](https://www.bloomberg.com/news/articles/2018-06-20/why-gunmakers-would-rather-sell-ar-15s-than-handguns); John J. Donohue, *The Swerve to "Guns*  
 27 *Everywhere": A Legal and Empirical Evaluation*, 83 *Law & Contemp. Problems*  
 28 117 (2020); Christopher S. Koper, *Assessing The Potential to Reduce Deaths And*  
*Injuries From Mass Shootings Through Restrictions on Assault Weapon and Other*  
*High-Capacity Semiautomatic 19 Firearms*, *CRIMINOLOGY & PUBLIC POLICY* 147  
 (2020); Mark Gius, *The Impact of State and Federal Assault Weapons Bans on*  
*Public Mass Shootings*, 22 *APPLIED ECON. LETTERS* 281 (2014).

1 the scope of constitutional protection has shifted over time as society has addressed  
2 new developments in firearms technology, evolving societal norms, and other  
3 changes. In short, social, and economic transformation were always accompanied  
4 by legal transformation. Put another way, as times change, the law changes with  
5 them.

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1  
2 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws  
3 of the United States of America that the foregoing is true and correct.

4 Executed on November 10, 2022, at Redding, Connecticut.  
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## INDEX OF EXHIBIT

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1	Curriculum Vitae of Saul Cornell	1-15

## **EXHIBIT 1**

**Saul Cornell**

Paul and Diane Guenther Chair in American History

Department of History

Fordham University

441 East Fordham Road \* Bronx, NY 10458 \* 203 826-6608 (c) \* [scornell1@fordham.edu](mailto:scornell1@fordham.edu)**Education**

1989	University of Pennsylvania	Ph.D.	Dissertation: "The Political Thought and Culture of the Anti-Federalists"
1985	University of Pennsylvania	MA	History
1982	Amherst College	BA	History - Magna Cum Laude
1980-81	University of Sussex, Brighton, England		

**Teaching Experience**

2009-2020	Guenther Chair in American History	Fordham University
2011-2022	Adjunct Professor of Law	Fordham Law School
2005-2008	Professor of History	The Ohio State University
1997-2005	Associate Professor, History	The Ohio State University
1995	Thomas Jefferson Chair	University of Leiden, The Netherlands
1991-1997	Assistant Professor, History	The Ohio State University
1989-1991	Assistant Professor, History	College of William and Mary

**Fellowships and Grants**

- 2019-2020 The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University
- 2018-2019 Senior Research Scholar in Residence, Floersheimer Center for Constitutional Democracy, Cardozo Law School
- 2014 Senior Research Scholar in Residence, University of Connecticut Law School
- 2011 Senior Research Scholar in Residence, Yale Law School
- 2003-2008 Joyce Foundation, Second Amendment Center Grant, \$575,000
- 2003-2004 NEH Fellowship
- 2002-2005 Department of Education, Teaching American History Grant, Historyworks, \$2,000,000
- 2002 Gilder-Lehrman Fellowship
- 2001-2002 Joyce Foundation Planning Grant, \$40,000
- 2001 American Council of Learned Societies (ACLS)
- 1999-2000 Betha Grant, Batelle Memorial Endowment, Ohio Teaching Institute, \$100,000
- 1998 Thomas Jefferson Memorial Foundation, Research Fellowship
- 1995 Thomas Jefferson Chair in American Studies, Fulbright Lecturing Award
- 1994 Ohio State University Seed Grant
- 1993 Ohio State University Special Research Assignment
- 1992 Ohio State University Grant-In-Aid
- 1989-1991 NEH Post-Doctoral Fellow, Institute of Early American History and Culture

### Prizes and Awards

- 2006 Langum Prize in Legal History 2006
- 2006 History News Network, Book of the Month
- 2006 History News Network, Top Young Historian
- 2001 Society of the Cincinnati, History Book Prize, a Triennial Award for the Best Book on the American Revolutionary Era
- 2000 Choice Outstanding Academic Book

### Book Publications

The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders Constitution  
*New Histories of American Law*, series eds., Michael Grossberg and Christopher Tomlins (Cambridge University Press, 2019) [With Gerald Leonard]

The Second Amendment On Trial: Critical Essays on District of Columbia v. Heller  
(University of Massachusetts Press, 2013) [with Nathan Kozuskanich]

Visions of America: A History of the United States [co-authored with Jennifer Keene and Ed O'Donnell]  
(First edition, 2009),( second edition 2013) (third edition, 2016)

"A Well Regulated Militia": The Founding Fathers and the Origins of Gun Control (Oxford University Press, 2006) (paperback edition 2008)

Whose Right to Bear Arms Did the Second Amendment Protect? (Bedford/St. Martins Press, 2000)  
(Paperback 2000)

The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828 (Institute of Early American History and Culture, University of North Carolina Press, 1999) (paperback edition 2001)

Editor, Retrieving the American Past: Documents and Essays on American History, (Pearson, 1994-2008)

### Scholarly Articles, Book Chapters, and Essays:

"History and Tradition or Fantasy and Fiction: Which Version of the Past Will the Supreme Court Choose in *NYSRPA v. Bruen*?, " 49 *Hastings Constitutional Law Quarterly* (2022): 145-177.

"The Long Arc of Arms Regulation in Public: From Surety to Permitting,1328–1928," 55 University of California, Davis Law Review (2022): 2545-2602

"'Infants' and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record," 40 Yale Law & Policy Review Inter Alia 1 (2021)

"The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America" 55 University of California, Davis Law Review Online (2021): 65-90.

- “President Madison's Living Constitution: Fixation, Liquidation, and Constitutional Politics in the Jeffersonian Era”, 89 Fordham Law Review (2021): 1761-1781.
- “History, Text, Tradition, and the Future of Second Amendment Jurisprudence: Limits on Armed Travel Under Anglo-American Law, 1688–1868,” 83 Law and Contemporary Problems (2020): 73-95
- “Reading the Constitution, 1787–91: History, Originalism, and Constitutional Meaning,” Law and History Review 37 (2019): 821–45
- “Constitutional Mythology and the Future of Second Amendment Jurisprudence after *Heller*,” in Firearms and Freedom: The Second Amendment in the Twenty-First Century Controversies in American Constitutional Law Series (Routledge, 2017): 8-24
- “The Right to Keep and Carry Arms in Anglo-American Law, Preserving Liberty and Keeping the Peace,” 80 Law and Contemporary Problems (2017): 11-54
- “Half Cocked’: The Persistence of Anachronism and Presentism in the Academic Debate over the Second Amendment,” 107 Northwestern Journal of Criminal Law 107 (2017): 203-218
- “The 1790 Naturalization Act and the Original Meaning of the Natural Born Citizen Clause: A Short Primer on Historical Method and the Limits of Originalism,” Wisconsin Law Review Forward 92 (2016)
- “Constitutional Meaning and Semantic Instability: Federalists and Anti-Federalists on the Nature of Constitutional Language,” in special issue on “The Future of Legal History,” American Journal of Legal History 56 (2016): 21-29
- “Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context,” Yale Law Journal Forum 125(2015-16):121-135 [with Eric Ruben]
- “Originalism As Thin Description: An Interdisciplinary Critique” Fordham Law Review Res Gestae 84 (2015): 1-10
- “The Right to Bear Arms,” The Oxford Handbook of the US Constitution, eds., Mark Tushnet, Sanford Levinson, and Mark Graber (2015): 739-759
- “Conflict, Consensus & Constitutional Meaning: The Enduring Legacy of Charles Beard” Constitutional Commentary 29(2014): 383-409
- “Meaning and Understanding in the History of Constitutional Ideas: the Intellectual History Alternative to Originalism” Fordham Law Review 82 (2013): 721-755
- “The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities” Fordham Urban Law Journal 39 (2012): 1695-1726
- “Evidence, Explanation, and the Ghost of Charles Beard” William & Mary Quarterly 69 (2012): 393-4
- “Idiocy, Illiteracy, and the Forgotten Voices of Popular Constitutionalism: Ratification and the Ideology of Originalism” William & Mary Quarterly 69 (2012): 365-368
- “The People’s Constitution v. The Lawyer’s Constitution: Popular Constitutionalism and the Original Debate Over Originalism,” Yale Journal of Law and the Humanities 23 (2011): 295-337
- “St. George Tucker's Lecture Notes, The Second Amendment, and Originalist Methodology: A Critical Comment,” Northwestern University Law Review 103 (2009): 406-416

- “Heller, New Originalism, and Law Office History: ‘Meet the New Boss, Same as the Old Boss’” UCLA Law Journal 56 (2009): 1095-1125
- “Originalism on Trial: The Use and Abuse of History in *District of Columbia v. Heller*” Ohio-State Law Journal 69 (2008): 625-640
- “Consolidation of the Early Federal System,” Chapter 10 of the Cambridge History of American Law (Cambridge University Press, 2008) [With Gerry Leonard]
- “The Ironie Second Amendment” Albany Government Law Review 2 (2008): 292-311.
- “The Original Meaning of Original Understanding: A Neo-Blackstonian Critique,” Maryland Law Review (2008): 101-115
- “Mobs, Militias, and Magistrates: Popular Constitutionalism During the Whiskey Rebellion,” Chicago-Kent Law Review (2007): 883-903
- “The Second Amendment and Early American Gun Regulation: a Closer Look at the Evidence,” Law and History Review (2007): 197-204
- “St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings,” William and Mary Law Review 47 (2006): 1123-55
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, the Lessons of History,” Stanford Law and Policy Review (2006): 571-596
- “Well Regulated: The Early American Origins of Gun Control,” Fordham Law Review 73 (2004): 487-528 [With Nathan DeDino]
- “Beyond the Myth of Consensus: The Struggle to Define the Right to Bear Arms in the Early Republic,” in Beyond the Founders: New Essays on the Political History of the Early Republic (UNC Press, 2005)
- “A New Paradigm for the Second Amendment,” Law and History Review 22 (2004): 161-7
- “Gun Laws and Policies: A Dialogue,” Focus on Law Studies: Teaching about Law in the Liberal Arts (American Bar Association, 2003)
- “The Militia Movement,” Oxford Companion to American Law (Oxford University Press, 2002)
- “Don’t Know Much About History: The Current Crisis in Second Amendment Scholarship,” Northern Kentucky Law Review (2003)
- “A Right to Bear Quills or Kill Bears? A Critical Commentary on the Linkage between the 1<sup>st</sup> and 2<sup>nd</sup> Amendment in Recent Constitutional Theory,” in The Limits of Freedom in A Democratic Society (Kent State University Press, 2001)
- “The Irony of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional History,” in American Law Ways and Folkways (Odense University Press, Denmark 2001)
- “Commonplace or Anachronism: The Standard Model, The Second Amendment, and the Problem of History in Contemporary Constitutional Theory,” Constitutional Commentary (1999): 221-246
- “Mere Parchment Barriers? Anti-Federalists, the Bill of Rights, and the Question of Rights Consciousness,” in Government Proscribed: The Bill of Rights (University of Virginia Press, 1998): 175-208



- “Moving Beyond the Great Story: Post-Modern Prospects, Post-Modern Problems, A Forum on Robert Berkhofer, Jr. Beyond the Great Story” American Quarterly (1998): 349-357
- “The Anti-Federalists,” in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- “The Bill of Rights,” in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- “Splitting the Difference: Textualism, Contextualism, and Post-Modern History,” American Studies (1995): 57-80
- “Canon Wars II: The Return of the Founders,” Reviews in American History 22 (1994): 413-417
- “Moving Beyond the Canon of Traditional Constitutional History: Anti-Federalists, the Bill of Rights and the Promise of Post-Modern Historiography,” Law and History Review (1994): 1-28
- “Early American History in a Post-Modern Age,” William and Mary Quarterly 50 (1993): 329-341
- “Liberal Republicans, Republican Liberals?: The Political Thought of the Founders Reconsidered,” Reviews in American History 21 (1993): 26-30
- “Politics of the Middling Sort: The Bourgeois Radicalism of Abraham Yates, Melancton Smith, and the New York Anti-Federalists,” in New York in the Age of the Constitution (New York Historical Society, 1992): 151-175
- “Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Anti-Federalist Ideology,” Journal of American History (1990): 1148-1172
- “The Changing Historical Fortunes of the Anti-Federalists,” Northwestern University Law Review (1989): 39-73
- “Reflections on the ‘Late Remarkable Revolution in Government,’ Aedanus Burke and Samuel Bryan’s Unpublished History of the Ratification of the Federal Constitution,” The Pennsylvania Magazine of History and Biography (1988): 103-130

**Book Reviews:**

- Journal of American History
- William and Mary Quarterly
- American Studies Journal of the Early Republic
- Pennsylvania Magazine of History and Biography
- American Quarterly
- American Journal of Legal History
- Law and History Review

**Journal Manuscript Referee:**

- Journal of American History
- William and Mary Quarterly
- Diplomatic History
- Pennsylvania Magazine of History and Biography
- Law and History Review
- Harvard Law Review

- Stanford Law Review
- Yale Law Journal

**Book Manuscript Reviewer:**

- University Press of Virginia
- University of North Carolina Press
- Stanford University Press
- University of Massachusetts Press
- Oxford University Press
- Cambridge University Press
- University of Michigan Press
- Harvard University Press

**Invited Lectures:**

“Race, Regulation, and Guns: The Battleground in the Debate Over the Second Amendment,”  
Haber/Edelman Lecture: University of Vermont, Fall 2021

“Second Amendment Myths and Realities,” University of Tampa, Honors College Symposium,  
November 30, 2018.

“The Common Law and Gun Regulation: Neglected Aspects of the Second Amendment Debate,” Guns  
in Law, Amherst College, Law Justice and Society (2016)

“The New Movement to End Gun Violence.” UCLA Hammer Museum (2016)

“No Person May Go Armed”: A Forgotten Chapter in the History of Gun Regulation” The Elizabeth  
Battelle Clark Legal History Series, Boston University College of Law, 2016

Legacy Speaker Series: “Guns in the United States,” University of Connecticut (2016) “How does the  
Second Amendment Apply to Today?”

American Constitution Society/ Federalist Society Debate, Tulane Law School, New Orleans (2016)

“The Second Amendment and The Future of Gun Regulation: Forgotten Lessons From U.S. History,”  
Constitution Day Lecture, Goucher College, (2015)

Keynote Lecture: “The Second Amendment and American Cultural Anxieties: From Standing Armies to  
the Zombie Apocalypse” Firearms and Freedom: The Relevance of the Second Amendment in the  
Twenty First Century, Eccles Center, British Library (Spring 2015)

“Narratives of Fear and Narratives of Freedom: A Short Cultural History of the Second Amendment,”  
Comparing Civil Gun Cultures: Do Emotions Make a Difference? Max Plank Institute, Berlin (2014)

“History and Mythology in the Second Amendment Debate,” Kollman Memorial Lecture, Cornell  
College, Iowa (Spring, 2013)

“Will the Real Founding Fathers Please Stand Up or Why are so few Historians Originalists”  
Constitution Day Lecture, Lehman College, Fall 2011

“Lawyers, Guns, and Historians: The Second Amendment Goes to Court,” SHEAR/HSP Public Lecture,  
Philadelphia, July, 2008

The Robert H. and Alma J. Wade Endowment Lecture, Kentucky Wesleyan University, “The Early American Origins of Gun Control” (2006)

“Jefferson, Mason, and Beccaria: Three Visions of the Right to Bear Arms in the Founding Era,” Bill of Rights Lecture, Gunston Hall Plantation, Fairfax, VA (2003)

“A New Paradigm for the Second Amendment,” Finlay Memorial Lecture, George Mason University, (2001)

“Academic Gunsmoke: The Use and Abuse of History in the Second Amendment Debate,” Cadenhead Memorial Lecture, University of Tulsa, (2000)

“Why the Losers Won: The Rediscovery of Anti-Federalism in the Reagan Years,” Thomas Jefferson Inaugural Lecture, University of Leiden, Netherlands, (1995)

### **Presentations:**

“From Ideology to Empiricism: Second Amendment Scholarship After Heller, “ Hastings Constitutional Law Quarterly Symposium, Heller at Ten, January 18, 2019

“Firearms and the Common Law Tradition,” Aspen Institute, Washington, DC (2016)

“The Original Debate over Original Meaning Revisited,” British Group in Early American History, Annual Meeting, Cambridge, England (2016)

“Second Amendment Historicism and Philosophy” The Second Generation of Second Amendment Scholarship” Brennan Center, NYU 2016

“The Reception of the Statute of Northampton in Early America: Regionalism and the Evolution of Common Law Constitutionalism” OIEAHC and the USC/Huntington Library Early Modern Studies Institute May 29–30, 2015

“The Right to Travel Armed in Early America: From English Restrictions to Southern Rights,” British Group in Early American History, Annual Conference Edinburgh, Scotland (2014)

“Progressives, Originalists, and Pragmatists: The New Constitutional Historicism and the Enduring Legacy of Charles Beard,” Charles Beard, Economic Interpretation and History, Rothmere Center, Oxford University (2012)

CUNY Early American Seminar, “The People’s Constitution v. the Lawyer’s Constitution,” 2011

Roundtable : “The Work of J.R. Pole,” SHEAR , Philadelphia, Pennsylvania 2011)

“The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation?” Bearing Arms, Policy, Policing, and Incorporation After Heller, Santa Clara Law School (2010)

“Re-envisioning Early American History,” American Historical Association Annual Meeting, San Diego (2010)

“The Ironic Second Amendment” Firearms, the Militia, and Safe Cities: Merging History, Constitutional Law and Public Policy, Albany Law School ( 2007)

“*District of Columbia v. Heller* and the Problem of Originalism,” University of Pennsylvania Constitutional Law Workshop, Philadelphia ( 2007)

- “Progressives and the Gun Control Debate,” American Constitution Society, Harvard Law School, (2006)
- “The Problem of Popular Constitutionalism in Early American Constitutional Theory,” American Association of Law Schools, Annual Conference (2006)
- “Popular Constitutionalism and the Whiskey Rebellion,” Symposium on Larry Kramer’s The People Themselves, Chicago-Kent Law School (2005)
- Roundtable Discussion on the Second Amendment and Gun Regulation, NRA/ GMU Student’s For the Second Amendment Symposium (2005)
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History,” Gun Control: Old Problems, New Problems, Joint Conference Sponsored by the John Glenn Institute and Stanford Law School (2005)
- “Original Rules for Originalists?” University of Minnesota Law School (2005)
- “The Fourteenth Amendment and the Origins of the Modern Gun Debate,” UCLA, Legal History Workshop (2004)
- “Beyond Consensus, Beyond Embarrassment: The Use and Abuse of History in the Second Amendment Debate,” American Society of Legal History, Austin, TX (2004)
- “Armed in the Holy Cause of Liberty: Guns and the American Constitution,” NYU Legal History Colloquium (2004)
- “Digital Searches and Early American History,” SHEAR Brown University (2004)
- “Well Regulated: The Early American Origins of Gun Control,” The Second Amendment and the Future of Gun Regulation,” Joint Conference Sponsored by the John Glenn Institute and Fordham Law School, New York (2004)
- “Minuteman, Mobs, and Murder: Forgotten Contexts of the Second Amendment,” Department of History, University of California Berkeley (2003)
- “History vs. Originalism in the Second Amendment Debate,” Federalist Society/ American Constitution Society, George Washington University Law School, Washington D.C. (2003)
- “Self-defense, Public Defense, and the Politics of Honor in the Early Republic,” Lake Champlain Early American Seminar, Montreal (2003)
- “The Ironie Second Amendment” “Gun Control: Controversy, Social Values, and Policy,” University of Delaware Legal Studies Conference, Newark, Delaware (2003)
- “Individuals, Militias, and the Right to Bear Arms: The Antebellum Debate Over Guns,” Institute for Legal Studies, University of Wisconsin School of Law (2004)
- “Guns in the British Atlantic World: New Research, New Directions” Society for the Historians of the Early American Republic, Ohio State University (2003)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” American Bar Foundation, Chicago (2003)
- “The Changing Meaning of the Armed Citizen in American History,” “Americanism Conference,” Georgetown University (2003)

- “A New Paradigm for the Second Amendment?” Supreme Court Historical Society, Washington, D.C. (2002)
- “Constitutional History as Cultural History: The Case of the Second Amendment” European American Studies Association, Bordeaux, France (2002)
- “Don’t Know Much About History: The Current Crises in Second Amendment Scholarship,” Salmon P. Chase College of Law, Symposium, “The Second Amendment Today,” (2002)
- “History, Public Policy, and the Cyber-Age: Gun Control Policy after the Emerson Decision,” Sanford Institute of Public Policy, Duke University (2002)
- “Constitutional History After the New Cultural History: The Curious Case of the Second Amendment,” Society of the Historians of the Early American Republic, Baltimore (2001)
- Roundtable Discussion, “The State of Second Amendment Scholarship,” American Historical Association (2001)
- “Armed in the Holy Cause of Liberty: Critical Reflections on the Second Amendment Debate,” Vanderbilt University Law School (2001)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” Boston University Law School, (2000)
- “The Current State of Second Amendment Scholarship,” National Press Club Washington, D.C. American Bar Association, (2000)
- “Taking the Hype out of Hyper-Text, Or What Should Textbook Companies Be Doing for us on the Web,” OAH St. Louis, Missouri (1999)
- “The Ironies of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional Theory,” European American Studies Association, Lisbon, Portugal (1998)
- “Deconstructing the Canon of American Constitutional History” American Society of Legal History, Seattle, Washington (1998)
- “Beyond Meta-narrative: The Promise of Hypertext,” American Studies Association, Seattle, Washington (1998)
- “Text, Context, Hypertext,” American Historical Association, Washington D.C. (1998)
- “Jefferson and Enlightenment,” International Center for Jefferson Studies, Charlottesville, VA, (1998)
- “Copley’s Watson and the Shark: Interpreting Visual Texts with Multi-media Technology,” American Studies Association, Washington, D.C. (1997)
- “Multi-Media and Post-Modernism,” H-Net Conference, Technology and the Future of History, East Lansing, Michigan (1997)
- Comment on Jack Rakove’s Original Meanings, Society of the Historians of the Early Republic, State College, PA (1997)
- “Teaching with Multi-Media Technology,” Indiana University, spring 1997 “Constitutional History from the Bottom Up: The Second Amendment as a Test Case,” McGill University, Montreal, Canada (1996)

- “Just Because You Are Paranoid, Does Not Mean the Federalists Are Not Out to Get You: Freedom of the Press in Pennsylvania,” University of Pennsylvania (1995)
- “Multi-Media and Post-Modernism: The Future of American Studies?” Lecture, Erasmus University, Rotterdam, Netherlands (1995)
- “Post-Modern American History? Ratification as a Test Case,” St. Cross College, Oxford University, Oxford, England (1994)
- “The Other Founders,” NYU Legal History Seminar,” NYU Law School (1994)
- “Reading the Rhetoric of Ratification,” paper presented at “Possible Pasts: Critical Encounters in Early America,” Philadelphia Center for Early American Studies, Philadelphia, PA (1994)
- “American Historiography and Post-Modernism,” Organization of American Historians, Atlanta, GA (1994)
- “The Anti-Federalist Origins of Jeffersonianism,” Columbia Seminar on Early American History (1994)
- “American History in a Post-Modern Age?” American Historical Association, San Francisco, CA (1994)
- “Post-Modern Constitutional History?” Indiana University School of Law, Bloomington, IN (1993)
- Participant, Institute of Early American History and Culture, planning conference, “New Approaches to Early American History,” Williamsburg, VA (1992)
- “Mere Parchment Barriers? Federalists, Anti-Federalists and the Problem of Rights Consciousness,” American Studies Association, Baltimore, MD (1991)
- “James Madison and the Bill of Rights: a comment on papers by Jack Rakove, Ralph Ketcham and Max Mintz,” Organization of American Historians and Center for the Study of the Presidency Conference, “America’s Bill of Rights at 200 Years,” Richmond, VA, (1991)
- Symposium participant, “Algernon Sidney and John Locke: Brothers in Liberty?” Liberty Fund Conference, Houston, TX (1991)
- “Mere Parchment Barriers? Antifederalists, the Bill of Rights and the Question of Rights Consciousness,” Capitol Historical Society, Washington, D.C. (1991)
- “Anti-Federalism and the American Political Tradition,” Institute of Early American History and Culture Symposium, Williamsburg, VA (1989)

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- “Clarence Thomas’ Latest Guns Decision Is Ahistorical and Anti-Originalist”  
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- PBS, “Need to Know: ‘Debating the Second Amendment: Roundtable’” April 26, 2013
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- “What the ‘Right to Bear Arms’ Really Means” *Salon* January 15, 2011 “Elena Kagan and the Case for an Elitist Supreme Court,” *Christian Science Monitor* May 20, 2010
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- “History and the Second Amendment,” *The Kojo Nnamdi Show*, WAMU (NPR) March 17, 2008
- “The Court and the Second Amendment,” *On Point* with Tom Ashbrook, WBUR (NPR) March 17, 2008
- “Aim for Sensible Improvements to Gun Regulations,” *Detroit Free Press*, April 29, 2007
- “A Well Regulated Militia,” *The Diane Rehm Show*, WAMU (NPR) Broadcast on Book TV (2006)
- “Taking a Bite out of the Second Amendment,” *History News Network*, January 30, 2005
- “Gun Control,” *Odyssey*, Chicago NPR September 8, 2004
- “Loaded Questions,” *Washington Post Book World* February 2, 2003
- “The Right to Bear Arms,” Interview *The Newshour*, PBS May 8, 2002
- “Real and Imagined,” *New York Times*, June 24, 1999

### Other Professional Activities

- Editorial Board, Constitutional Study, University of Wisconsin Press (2014-present)
- Advisory Council, Society of Historians of the Early American Republic (SHEAR) (2007-2009)
- Program Committee, Annual Conference, Society of the Historians of the Early American Republic, Philadelphia, PA 2008
- Editorial Board, American Quarterly (2004-2007)
- Director, Second Amendment Research Center, John Glenn Institute for Public Service and Public Policy, 2002- 2007
- Fellow, Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University 2001- 2004
- Local Arrangements Committee, Annual Conference, Society of the Historians of the Early American Republic, Columbus, OH 2003
- Project Gutenberg Prize Committee, American Historical Association, 2004, 2002
- Program Committee, Annual Conference, Society of the Historians of the Early Republic, 2001
- Co-Founder Ohio Early American Studies Seminar
- NEH Fellowship Evaluator, New Media Projects, Television Projects
- Multi-media Consultant and Evaluator, National Endowment for the Humanities, Special, Projects, Division of Public Programs, Grants Review Committee (1999)

### Court Citations, Amicus Briefs and Expert Witness Reports

#### US Supreme Court:

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United States v. Boffil-Rivera, No. 08-20437-CR, 2008 WL 8853354, 6 (S.D. Fla. Aug. 12, 2008), report and recommendation adopted sub nom.

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#### **State Courts:**

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Posey v. Com., 185 S.W.3d 170, 179–180 (Ky. 2006).

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State v. Roundtree, 2021 WI 1, 395 Wis. 2d 94, 952 N.W.2d 765

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#### **Amicus Briefs:**

Amicus Brief, *NYSRPA v. Bruen*, No. 20-843 (U.S. Supreme Court, 2021) [2<sup>nd</sup> Amendment]

Amicus Brief, *Young v. State of Hawaii* N O . 12-17808 (9<sup>th</sup> Cir. 2020) [2<sup>nd</sup> Amendment]

Amicus Brief, *Gould v. Morgan*, No. 17-2202 (1st Cir. 2018) [2<sup>nd</sup> Amendment]

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Amicus Brief, *District of Columbia v. Heller* (US Supreme Court 2008) [2<sup>nd</sup> Amendment]

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Amicus Brief, *Emerson v. U.S.* case on appeal (5<sup>th</sup> Circuit 1999) [2nd Amendment]  
Pro-bono Historical Consultant State of Ohio, *McIntyre v. Ohio*, (U.S. Supreme Court, 1995) [1st Amendment]

### **Expert Witness Reports**

*Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, 14-cv-02850 (D. Colo.).  
*Chambers, et al., v. City of Boulder*, 2018 CV 30581 (Colo. D. Ct. City of Boulder, filed June 14, 2018).  
*Zeleny v. Newsom*, 14-cv-02850 (N.D. Cal.).  
*Miller, et al v. Smith, et al.*, 2018 cv 3085 (C.D. Ill.).  
*Jones v. Bonta* United States Court of Appeals, --- F.4th ---- , 2022 WL 1485187 (9th Cir., May 11, 2022).  
*Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.).  
*Worth v. Harrington*, 21-cv-1348 (D. Minn.).

## **EXHIBIT 9**

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8 *State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 17-cv-1017-BEN-JLB

**SUPPLEMENTAL**  
**DECLARATION OF JOHN J.**  
**DONOHUE**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                   **SUPPLEMENTAL DECLARATION OF JOHN J. DONOHUE**

2           I, John J. Donohue, declare under penalty of perjury that the following is true  
3 and correct:

4           1.     I previously submitted a declaration in support of the Attorney  
5 General's Opposition to Plaintiffs' Motion for Preliminary, which was filed with  
6 this Court on June 5, 2017 ("2017 Declaration" hereinafter), and an expert rebuttal  
7 report filed with this Court on April 9, 2018 ("2018 Report, hereinafter").<sup>1</sup> I make  
8 this supplemental declaration in support of Defendants' Supplemental Brief in  
9 Response to the Court's Order of September 26, 2022.

10          2.     This declaration is based on my own personal knowledge and  
11 experience, and if I am called to testify as a witness, I could and would testify  
12 competently to the truth of the matters discussed in this declaration.

13          3.     I have been retained by the California Department of Justice to render  
14 expert opinions in this case. I am being compensated at a rate of \$850 per hour.

15                   **BACKGROUND AND QUALIFICATIONS**

16          4.     I am the C. Wendell and Edith M. Carlsmith Professor of Law at  
17 Stanford Law School. A true and correct copy of my current curriculum vitae is  
18 attached as **Exhibit A** to this declaration.

19          5.     Since submitting my 2017 Declaration in this matter, I have provided  
20 additional testimony as an expert witness. I filed an expert declaration in *Chambers*  
21 *v. City of Boulder*, Case No. 2018CV30581, in the District Court of Boulder  
22 County in September 2020, involving a challenge to the City of Boulder's  
23 restrictions on assault weapons.

24          6.     At the request of the United States Department of Justice, I filed an  
25 expert declaration in July 2020 and testified at trial in April 2021 in a case arising  
26

27                   

---

  
28           <sup>1</sup> My 2018 Report was marked as Exhibit 2 to the Declaration of John Echeverria and filed in this matter at Docket Number 53-4.



1 out of the Sutherland Springs mass shooting that killed 26 in November 2017:  
2 *Holcombe, et al. v. United States*, Case No. 5:18-CV-555-XR (W.D. Tex.). On  
3 December 9, 2020, I submitted an expert report on behalf of the City of San  
4 Francisco in a wrongful conviction lawsuit, *Caldwell v. City of San Francisco*, Case  
5 No. 12-cv-1892 DMR, United States District Court, Northern District of California,  
6 Oakland Division.

7 7. I was the main author of the Brief of Amici Curiae Social Scientists  
8 and Public Health Researchers in Support of Respondents, which was submitted to  
9 the United States Supreme Court on September 21, 2021 in *New York State Rifle &*  
10 *Pistol Association v. Bruen*, Case No. 20-843.

11 8. On January 24, 2022, I submitted an expert declaration in *Worth v.*  
12 *Harrington*, a lawsuit in the District of Minnesota (Case No. 21-cv-1348)  
13 challenging how Minnesota regulates the concealed carry of firearms by individuals  
14 aged 18 to 20. I was deposed in this case on March 28, 2022.

15 9. On May 31, 2022, I submitted an expert declaration in *Meyer v. Raoul*,  
16 a lawsuit in the Southern District of Illinois (Case No. 21-cv-518-SMY)  
17 challenging how Illinois regulates the concealed carry of firearms by individuals  
18 aged 18 to 20.

19 10. On September 14, 2022, I submitted an expert declaration in  
20 *Viramontes v. The County of Cook*, a lawsuit in the Northern District of Illinois  
21 (Case No. 1:21-cv-04595) challenging the Blair Holt Assault Weapons Ban enacted  
22 by Cook County, Illinois in 2006.

23 11. On October 13, 2022, I submitted an expert declaration in *Miller v.*  
24 *Bonta*, a lawsuit in the Southern District of California (Case No. 3:19-cv-01537-  
25 BEN-JLB) challenging how California regulates the assault weapons.  
26  
27  
28

## OPINIONS

### I. THE GROWING PROBLEM OF PUBLIC MASS SHOOTING IN THE UNITED STATES

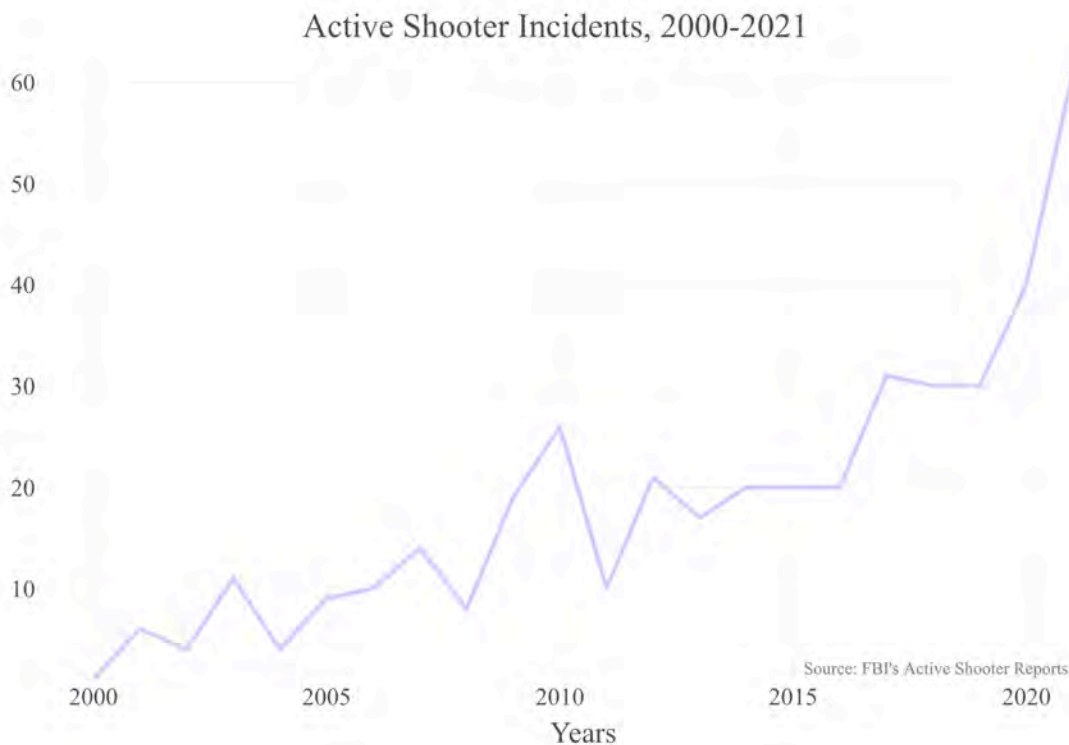
12. I have been asked by the California Department of Justice to update the opinions expressed in my 2017 Declaration with currently available information. I continue to stand by the opinions and conclusions expressed in my 2017 Declaration, as well as those in my 2018 Report.

13. At the time of my 2017 Declaration, I stressed that the problem of active shooter incidents, which had been on the rise, would only be getting worse if significant action was not taken to address it. Sadly, my predictions based on the growing lethality of weaponry in the United States have been fulfilled. As bad as the active shooter problem looked in 2018, it is considerably worse today, as seen in the same FBI active shooter data now extended through 2021 in Figure 1. While 2017 was the peak of active shooter incidents at 30 up until that point, last year the number more than doubled to 61.

14. The ominous and steep upward trend in the FBI data charting the growth in active shooter incidents is unmistakable. Not surprisingly, the number of mass shootings clearly is higher following the termination of the federal assault weapons ban in 2004. In that year, the FBI counted 4 active shooter incidents in which 14 died. Since then, the mayhem has accelerated so much that in 2021 the FBI counted 61 active shooter incidents killing 103.<sup>2</sup>

<sup>2</sup> FBI, “Active Shooter Incidents in the United States in 2021,” <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2021-052422.pdf/view>.

Figure 1



15. Since my 2017 Declaration, the United States has experienced numerous, devastating mass shootings, including the March 22, 2021 shooting at King Soopers supermarket in Boulder, Colorado (10 killed); the May 26, 2021 shooting in San Jose, California (9 killed); the May 14, 2022 shooting in Buffalo, New York (10 killed); the May 24, 2022 shooting at Robb Elementary in Uvalde, Texas (19 children and 2 adults killed); and the July 4, 2022 shooting at a Fourth of July parade in Highland Park, Illinois (7 killed). These figures do not reflect the countless people injured, both physically and emotionally, and the devastation inflicted on the communities in which they occurred.

16. Tellingly, the recent 18-year-old Buffalo shooter, who killed 10 using the same weapon as the Sandy Hook shooter—a Bushmaster XM-15 semiautomatic rifle with a high-capacity magazine—had written, “I am well aware that my actions

1 will effectively ruin my life. If I'm not killed during the attack, I will go to prison  
2 for an inevitable life sentence.”<sup>3</sup>

3 17. Both the February 2018 mass killing at Parkland High School and the  
4 May 2022 mass killing in Uvalde, Texas – where police delayed entering the school  
5 during a shooting – vividly underscored how police responses to violence are  
6 impaired when the officers are confronted by a shooter armed with an assault rifle  
7 and high-capacity magazines.

8 18. Decades of research has shown that there is a considerable variation in  
9 the survivability of assault depending on the instrumentality employed. A seminal  
10 1972 study by UC Berkeley Professor Frank Zimring found “that the outcome of  
11 gun assaults had a large random element, and that the power of the firearm was one  
12 systematic factor influencing the likelihood that an individual with a gunshot injury  
13 would survive.”<sup>4</sup>

14 19. A meticulous study by Anthony Braga and Phil Cook in 2018 has  
15 powerfully confirmed this instrumentality effect. Braga and Cook examined the  
16 files of 511 gunshot victims kept by the Boston Police Department and found that  
17 survivability from gunshot wounds varied considerably based on attributes of the  
18 weapon and ammunition that generated the wound. Specifically, the death rate  
19 from handgun assault injuries increased substantially as the caliber of the firearm  
20 increased—even though the caliber was not correlated with observable indicators of  
21 the intent and determination to kill by the shooter. The shooter's use of a medium

22  
23 <sup>3</sup> Ashley Parker, Tyler Pager, and Colby Itkowitz, [“From Sandy Hook to Buffalo and Uvalde: Ten years of failure on gun control,”](#) *Washington Post*, May  
24 22, 2022; Jesse McKinley, Jonah E. Bromwich, Andy Newman and Chelsia Rose  
25 Marcius, [“Buffalo Suspect Planned Attack for Months, Online Posts Reveal,”](#) *The*  
26 *New York Times*, May 16, 2022; Craig Whitlock, David Willman, and Alex Horton,  
27 [“Massacre Suspect Said He Modified Bushmaster Rifle to Hold More Ammunition,”](#) *Washington Post*, May 15, 2022.

28 <sup>4</sup> The description of the Zimring study comes from Braga and Cook (2018),  
infra, note 5.

1 caliber handgun (.38, .380, and 9 mm) more than doubled the odds that the  
2 wounded victim would die compared to small caliber handguns (.22, .25, and .32).  
3 Large caliber handguns (.357 magnum, or greater) more than doubled the odds of  
4 death compared to medium caliber handguns.

5 20. The authors conclude that:

6 The results here support the view that the intrinsic power and lethality of  
7 the weapon had a direct effect on the likelihood that a victim of a  
8 criminal shooting died. For Boston, in the period studied here, simply  
9 replacing larger-caliber guns with small-caliber guns with no change in  
10 location or number of wounds would have reduced the gun homicide rate  
by 39.5 percent. It is plausible that larger reductions would be associated  
with replacing all types of guns with knives or clubs (p.8, Braga and  
Cook 2018).<sup>5</sup>

11 21. Of course, the conclusion of the Braga and Cook study—that  
12 switching to less deadly firearm options could reduce firearm deaths—applies  
13 directly to bans on assault weapons and high-capacity magazines. The greater the  
14 lethality of the weapon, the more killed and injured in active shooter incidents.  
15 This was clearly illustrated in a study for the *Journal of the American Medical*  
16 *Association* that examined deaths and injuries documented in the FBI Active  
17 Shooter Database from 2000-2017.<sup>6</sup> The authors found that deaths and injuries  
18 were substantially higher for the 61 active shooter incidents using a semiautomatic  
19 rifle versus the 187 episodes using some other firearm. Specifically, in the  
20 incidents in which the shooter employed a semi-automatic rifle the average number  
21 killed or wounded was 9.72 versus only 5.47 killed or wounded when other  
22 firearms were used. (Note that the authors excluded the horrific Las Vegas

23  
24 <sup>5</sup> Anthony A. Braga and Philip J. Cook, “The Association of Firearm Caliber  
25 with Likelihood of Death from Gunshot Injury in Criminal Assaults,” *JAMA*  
*Network Open*. 2018; 1(3):e180833. doi:10.1001/jamanetworkopen.2018.0833,  
26 <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2688536>.

27 <sup>6</sup> Elzerie de Jager, et al., “Lethality of Civilian Active Shooter Incidents With  
28 and Without Semiautomatic Rifles in the United States,” *JAMA*.  
2018;320(10):1034-1035. doi:10.1001/jama.2018.11009,  
<https://jamanetwork.com/journals/jama/fullarticle/2702134>.

1 shooting from the numbers above, since that case was so extreme, with 60 killed  
2 and almost 500 wounded—all with semi-automatic rifles.)

3 22. This instrumentality effect was further demonstrated in an article I  
4 authored with Phil Cook since my 2017 Declaration, demonstrating that the federal  
5 assault weapons ban—which banned both new semi-automatic assault rifles with  
6 certain features that made them attractive to mass shooters *and* new ammunition  
7 magazines that could hold more than ten rounds—suppressed deaths in public mass  
8 shootings.<sup>7</sup> Figure 2 below shows that the deaths that occurred from these public  
9 mass shootings over the period from 1985-2019 in five year increments. The  
10 Figure highlights that by the second half of the ten-year existence of the federal  
11 assault weapons ban (1999-2004), fatalities from public mass shootings using  
12 banned weaponry had virtually been cut in half (falling from 30 down to 16).  
13 Conversely, there was no decline in public mass shooting deaths over this period  
14 with non-banned weaponry.

15 23. After the federal ban lapsed in 2004, the deaths from public mass  
16 shootings using the previously banned weaponry rose sharply: rising from 16 in the  
17 last five years of the federal ban to 271 in the five-year span from 2015-2019—with  
18 the latter figure 17 times as high as the former. Meanwhile, there was relatively  
19 little movement in public mass shooting deaths using the less-lethal weaponry  
20 (neither an assault weapon nor a high-capacity magazine). Indeed, as the Figure 2  
21 illustrates, there was roughly the same number of deaths from less lethal weaponry  
22 in the five-years prior to the federal assault weapons ban (1990-1994) as there was  
23 from 2015-2019—specifically 83 in the pre-ban period and 81 in the final period.

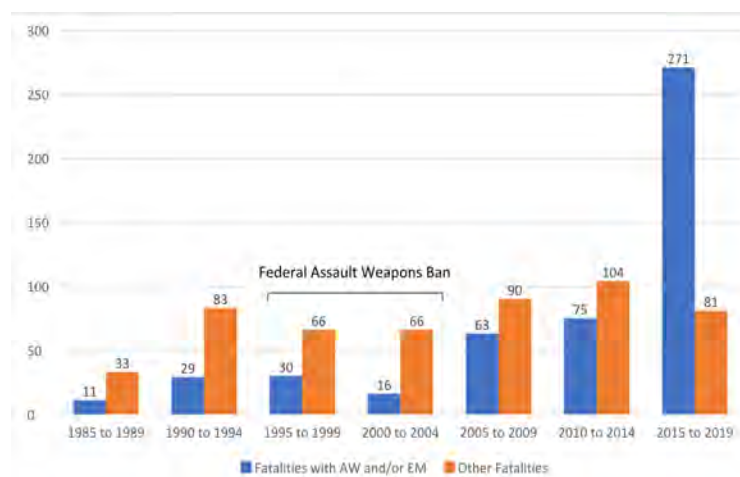
24 24. Figure 2 also highlights that while there was a roughly comparable  
25 *number of incidents* of public mass shootings that used either the most lethal  
26

27 <sup>7</sup> Phil Cook and John Donohue, “Regulating Assault Weapons and Large-  
28 Capacity Magazines for Ammunition,” *JAMA*. 2022; 328(12):1191-1192,  
<https://jamanetwork.com/journals/jama/fullarticle/2796675>.

(previously federally banned) weaponry or less lethal firearms not subject to the federal ban, the incidents involving assault weapons and/or high-capacity magazines were far more lethal. Specifically, the 18 public mass shootings conducted with the most lethal weapons killed 271 (roughly 15 deaths per episode), while the 14 public mass shootings with the less lethal firearms killed 81 (about 5.8 deaths per episode).

Figure 2

Victim Counts for Mass Public Shootings in the United States, 1985 - 2019  
Using Assault Weapons and/or High-Capacity Magazines versus Other Firearms



in the last five year period, the 18 incidents with the more lethal weapons were far more deadly than the 14 incidents with the less lethal firearms.

25. One of the unfortunate consequences of the continuing advances in the lethality and power of modern firearms is that without appropriate government action the dangers posed by civilian weaponry will continue to outpace any legitimate crime-reducing benefit that firearms might provide. The lesson of the November 2017 massacre at the Sutherland Springs Baptist Church in Texas highlights the growing dangers. The killer in that case used an AR-15 that was modified to include a laser scope and features that could allow large capacity magazines to be more quickly reloaded to maintain a relentless barrage. The killer



1 stood outside the church and fired straight through the walls of the church as he  
2 strafed along at just above the top of the levels of the church pews, allowing him to  
3 shoot 254 shots from **outside** the church in a matter of minutes on his way to killing  
4 26 men, women, and children. No portable weapon in civilian hands at the time of  
5 the adoption of the Second Amendment could possibly generate this degree of  
6 destruction. The evident social harms will only grow as gun technology increases  
7 firearm lethality.

8 26. My 2017 Declaration explained that the increase in gun massacre  
9 incidents and fatalities closely tracks the growth in the U.S. of assault weapons  
10 sales, the removal of potential liability on the part of gun merchants, and intense  
11 advertising of the militarized upgrades, from high-capacity magazines to flash  
12 suppressors and other tactical accessories, which has only continued since my  
13 declaration. Research published following the mass shootings in Buffalo, New  
14 York and Uvalde, Texas killing a total of 31 in May 2022 further confirms these  
15 findings.<sup>8</sup> Specifically, an analysis of mass shooting data by a group of injury  
16 epidemiologists and trauma surgeons reached the following conclusion:

17 We calculated that the risk of a person in the U.S. dying in a mass  
18 shooting was 70% lower during the period in which the assault weapons  
19 ban was active. The proportion of overall gun homicides resulting from  
20 mass shootings was also down, with nine fewer mass-shooting-related  
21 fatalities per 10,000 shooting deaths.<sup>9</sup>

## 22 **II. INTERNATIONAL EFFORTS TO ADDRESS ASSAULT WEAPONS AND MASS** 23 **SHOOTINGS**

24 27. I noted in my 2017 Declaration that Australia had banned assault  
25 weapons back in 1996. In 2019, New Zealand followed the Australian lead after a

26 <sup>8</sup> Klein, Michael, 2022, Did the assault weapons ban of 1994 bring down  
27 mass shootings? Here's what the data tells us, *The Conversation*, June 8, 2022,  
<https://theconversation.com/did-the-assault-weapons-ban-of-1994-bring-down-mass-shootings-heres-what-the-data-tells-us-184430>.

28 <sup>9</sup> *Id.*

1 horrific mass murder with an assault rifle,<sup>10</sup> and Canada just announced in May  
 2 2022 its plans for a similar gun buyback for its current stock of assault weapons  
 3 after its own horrendous mass shooting prompted the enactment of a ban on assault  
 4 weapons in 2020.<sup>11</sup> Tellingly, in announcing an array of stringent gun safety  
 5 measures, Canadian Prime Minister Justin Trudeau showed that he has learned from  
 6 the lamentable experience of mass killings in the United States: “We need only look  
 7 south of the border to know that if we do not take action, firmly and rapidly, it gets  
 8 worse and worse and more difficult to counter.”

### 9 **III. THREATS TO CIVIL PEACE AND TO DEMOCRACY ITSELF**

10 28. There is also a larger issue at stake with the proliferation of assault  
 11 weapons and high-capacity magazines: their capacity to facilitate political violence  
 12 and threaten American democracy. The concern is heightened by the sharp rise in  
 13 the percentage of Americans who think that violence against the government could  
 14 be appropriate, which doubled from 16 percent in 2010 to 34 percent in 2021 (over  
 15 40 percent of Republicans and independents and 23 percent of Democrats agreed).<sup>12</sup>

17 <sup>10</sup> Associated Press, “New Zealanders hand in 50,000 guns after assault  
 18 weapon ban,” Dec. 21, 2019, <https://www.nbcnews.com/news/world/new-zealanders-hand-50-000-guns-after-assault-weapon-ban-n1106081> (“The  
 19 government banned the most lethal types of semi-automatic weapons less than a  
 20 month after a lone gunman in March [2019] killed 51 worshippers at two  
 21 Christchurch mosques. The police then launched a six-month program to buy the  
 22 newly banned weapons from owners.”).

23 <sup>11</sup> The Prime Minister also announced that magazine size would be restricted  
 24 to five rounds in long guns. Justin Trudeau, “Further strengthening our gun control  
 25 laws,” (May 30, 2022), <https://pm.gc.ca/en/news/news-releases/2022/05/30/further-strengthening-our-gun-control-laws>; Amanda Coletta, “Canada vows to ‘freeze’  
 26 handgun sales, buy back assault-style weapons,” *The Washington Post* (May 30,  
 27 2022)(“[T]he government banned 1,500 makes and models of “military-style  
 28 assault weapons” in 2020, after a gunman posing as a police officer charged across  
 rural Nova Scotia, killing 22 people, including a Royal Canadian Mounted Police  
 officer, in the country’s deadliest mass shooting.”).

<sup>12</sup> Meryl Kornfield and Mariana Alfaro, “1 in 3 Americans say violence  
 against government can be justified, citing fears of political schism, pandemic,”  
*Washington Post*, January 1, 2022,  
<https://www.washingtonpost.com/politics/2022/01/01/1-3-americans-say-violence-against-government-can-be-justified-citing-fears-political-schism-pandemic/>.

29. The extent and severity of these concerns have been clarified by the events surrounding the “Stop the Steal” rally of January 6, 2021, which I have written elsewhere has provided new insight into the dangers of such weaponry and the utter folly of many of the claims of the gun lobby:

Consider the gun lobby protestation that “Gun control simply doesn’t work.” Imagine for a moment what that rally would have looked like in Houston, Texas, or some other “gun-friendly” jurisdiction. Without Washington, DC’s profoundly wise firearm restrictions [including its assault weapons ban], a very large number of the rioters would have been marching on the U.S. Capitol armed with assault rifles equipped with high-capacity magazines and other highly lethal weapons. When the mob storming the Capitol spun out of control, guns would have been flashing everywhere, and it is not hard to imagine that bullets would have been cutting down scores or even hundreds of victims. Those who remember the 1970 Kent State massacre understand that once the bullets start flying in a riotous atmosphere, the consequences quickly turn lethal and dire....

The pernicious Proud Boys leader Enrique Tarrio [now under indictment for seditious conspiracy],<sup>13</sup> who had planned to address the crowd before the U.S. Capitol riot, was thankfully taken off the streets two days earlier when he was arrested for tearing down a Black Lives Matter banner on a Washington, DC, church and lighting it on fire. At the time of his arrest, Tarrio was carrying two high-capacity magazines festooned with the Proud Boys logo. Washington, DC’s wise prohibition on such unnecessary accoutrements to lethal weaponry managed to keep one conspiring criminal away from the U.S. Capitol on January 6, and thousands of others, knowing of Washington, DC’s strict gun laws, were dissuaded from carrying weapons because of these laws.

[Moreover, the claim that assault weapons could protect American democracy is fanciful.] First, the thought that private gun owners could stand up to the modern U.S. military if it backed a tyrannical federal government is absurd. There is no circumstance in which private citizens in modern America could promote democracy by using assault weapons to kill government employees to show their disapproval of what they perceive to be a “tyrannical” government. Second, the idea that gun owners can be expected to *oppose* rather than support the tyrant was dealt a fatal blow by the violence at the U.S. Capitol.<sup>14</sup>

<sup>13</sup> Spencer Hsu, “Proud Boys leader Tarrio, 4 top lieutenants charged with seditious conspiracy in widening Jan 6 case”, *Washington Post*, June 6, 2022, <https://www.washingtonpost.com/dc-md-va/2022/06/06/tarrio-proud-boys-seditious-conspiracy/>.

<sup>14</sup> John Donohue, “Will the Supreme Court Avoid Further Self-Inflicted Second Amendment Wounds?” Brennan Center for Justice (June 2021), [https://www.brennancenter.org/sites/default/files/2021-06/Donohue\\_final.pdf](https://www.brennancenter.org/sites/default/files/2021-06/Donohue_final.pdf).

**CONCLUSION**

30. As discussed in my 2017 Declaration, the problem of mass shootings in the United States is growing worse and is exacerbated by the ready availability of assault weapons and high-capacity magazines. These weapons are far more likely to be used for criminal purposes and to be employed in an effort to thwart American democracy than to protect the Republic. Additional information gathered since my declaration only serves to reinforce those opinions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 8, 2022, at Stanford, California.



John J. Donohue III

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## **EXHIBIT A**

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<https://law.stanford.edu/directory/john-j-donohue-iii/>

## EMPLOYMENT

### Full-time Positions

- Stanford Law School, C. Wendell and Edith M. Carlsmith Professor of Law, September 2010 to the present.
- Yale Law School, Leighton Homer Surbeck Professor of Law, July 2004 to August 2010.
- Stanford Law School, Professor of Law, September 1995 to June 2004.
  - William H. Neukom Professor of Law, February 2002 – June 2004.
  - John A. Wilson Distinguished Faculty Scholar, March 1997 – January 2002.
  - Academic Associate Dean for Research, since July 2001 – July 2003.
  - Stanford University Fellow, September 2001 – May 2003.
- Northwestern University School of Law:
  - Class of 1967 James B. Haddad Professor of Law, September 1994-August 1995
  - Harry B. Reese Teaching Professor, 1994-1995
  - Professor of Law, May 1991-September 1994
  - Associate Professor, May 1989-May 1991
  - Assistant Professor, September 1986-May 1989.
- Research Fellow, American Bar Foundation, September 1986-August 1995.
- Associate Attorney, Covington & Burling, Washington, D.C., October 1978-July 1981 (including last six months as Attorney, Neighborhood Legal Services)
- Law Clerk to Chief Justice T. Emmet Clarie, U.S. District Court, Hartford, Connecticut, September 1977-August 1978.

### Temporary Appointments

- Affiliated Research Professor, American Bar Foundation, September 2020 – August 2025.
- Visiting Professor, Tel Aviv University School of Law, May 2022.
- Lecturer on the Economics of Crime, Bogota Summer School in Economics, Universidad del Rosario, Bogota, Colombia, June 2020.
- Visiting Professor, Bocconi University, Milan, Italy, October- November 2012, April 2014, and June 2015.
- 2011 Faculty Scholar in Residence, University of Denver Sturm College of Law, April 21-22, 2011.



- Visiting Fellow, The Milton Friedman Institute for Research in Economics, University of Chicago, October 2009.
- Schmidheiny Visiting Professor of Law and Economics, St. Gallen University, November – December, 2007.
- Visiting Lecturer in Law and Economics, Gerzensee Study Center, Switzerland, June 2007.
- Visiting Professor, Tel Aviv University School of Law, May 2007.
- Herbert Smith Visitor to the Law Faculty, University of Cambridge, England, February 2006.
- Visiting Professor, Harvard Law School, January 2003.
- Fellow, Center for Advanced Studies in the Behavioral Sciences, Stanford, California, Academic year 2000-01.
- Visiting Professor, Yale Law School, Fall, 1999.
- Professor, Center for the Study of American Law in China, Renmin University Law School, Beijing, July 1998.
- Visiting Professor of Law and Economics, University of Virginia, January 1997.
- Lecturer, Toin University School of Law, Yokohama, Japan, May-June 1996.
- Cornell Law School, Distinguished Visiting Fellow in Law and Economics, April 8-12, 1996 and September 25-29, 2000
- Visiting Professor, University of Chicago Law School, January 1992-June 1992.
- Visiting Professor of Law and Economics, University of Virginia Law School, January 1990-May 1990.
- Fellow, Yale Law School Program in Civil Liability, July 1985-August 1986.
- Private Practice (part-time), New Haven, Connecticut, September 1981-August 1986.
- Instructor in Economics, Yale College, September 1983-August 1985.
- Summer Associate, Donovan Leisure Newton & Irvine, New York, Summer 1982.
- Summer Associate, Perkins, Coie, Stone, Olsen & Williams, Seattle, Washington, Summer 1976.
- Research Assistant, Prof. Laurence Lynn, Kennedy School of Government, Harvard University, Summer 1975.
- LSAT Tutor, Stanley Kaplan Education Center, Boston, Massachusetts; Research Assistant, Prof. Philip Heymann, Harvard Law School; Research Assistant, Prof. Gordon Chase, Harvard School of Public Health. (During Law School).

## **EDUCATION**

### **Yale University, 1981-1986**

- University Fellow in Economics; M.A. 1982, M. Phil. 1984, Ph.D. 1986.
  - Dissertation: "A Continuous-Time Stochastic Model of Job Mobility: A Comparison of Male-Female Hazard Rates of Young Workers." Awarded with Distinction by Yale.
  - Winner of the Michael E. Borus Award for best social science dissertation in the last three years making substantial use of the National Longitudinal Surveys--awarded by the Center for Human Research at Ohio State University on October 24, 1988.
- National Research Service Award, National Institute of Health.
- Member, Graduate Executive Committee; Graduate Affiliate, Jonathan Edwards College.

### **Harvard Law School, 1974-1977 (J.D.)**

- Graduated Cum Laude.

- Activities: Law Clerk (Volunteer) for Judge John Forte, Appellate Division of the District Court of Central Middlesex; Civil Rights, Civil Liberties Law Review; Intra-mural Athletics; Clinical Placement (Third Year): (a) First Semester: Massachusetts Advocacy Center; (b) Second Semester: Massachusetts Attorney General's Office--Civil Rights and Consumer Protection Divisions. Drafted comments for the Massachusetts Attorney General on the proposed U.S. Department of Justice settlement of its case against Bechtel Corporation's adherence to the Arab Boycott of Israeli companies.

#### **Hamilton College, 1970-1974 (B.A.)**

- Departmental Honors in both Economics and Mathematics
  - Phi Beta Kappa (Junior Year)
- Graduated fourth in class with the following academic awards:
  - Brockway Prize (Highest GPA Freshman Year)
  - Edwin Huntington Memorial Mathematical Scholarship
  - Fayerweather Prize Scholarship
  - Oren Root Prize Scholarship in Mathematics
- President, Root-Jessup Public Affairs Council.

#### **PUBLICATIONS**

##### **Books and Edited Volumes:**

- Law and Economics of Discrimination, Edward Elgar Publishing, 2013.
- Employment Discrimination: Law and Theory, Foundation Press, 2005, 2021 (5th edition) (with George Rutherglen).
- Economics of Labor and Employment Law: Volumes I and II, Edward Elgar Publishing, 2007. [http://www.e-elgar.co.uk/bookentry\\_main.lasso?id=4070](http://www.e-elgar.co.uk/bookentry_main.lasso?id=4070)
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- Foundations of Employment Discrimination Law, Oxford University Press, 1997 (Initial edition).

##### **Book Chapters:**

- "Drug Prohibitions and Its Alternatives." Chapter 2 in Cook, Philip J., Stephen Machin, Olivier Marie, and Giovanni Mastrobuoni, eds, *Lessons from the Economics of Crime: What Reduces Offending?* MIT Press. 45-66 (2013).
- "The Death Penalty" Chapter in Encyclopedia of Law and Economics, Spring (2013) and in Alain Marciano & Giovanni Battista Ramello eds., Encyclopedia of Law and Economics (2019).
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- "Assessing the Relative Benefits of Incarceration: The Overall Change Over the Previous Decades and the Benefits on the Margin" in Steven Raphael and Michael Stoll, eds., "Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom," pp. 269-341 (2009).

- "Does Greater Managerial Freedom to Sacrifice Profits Lead to Higher Social Welfare" In Bruce Hay, Robert Stavins, and Richard Viator, eds., Environmental Protection and the Social Responsibility of Firms: Perspectives from Law, Economics, and Business (2005).
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- "The Impact of Concealed Carry Laws" in Jens Ludwig and Philip Cook, Evaluating Gun Policy: Effects on Crime and Violence (Washington D.C.: Brookings, 2003).

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- Phil Cook and John Donohue, "Regulating Assault Weapons and Large-Capacity Magazines for Ammunition," JAMA. 2022;328(12):1191-1192.  
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#### WORKSHOPS AND ADDRESSES:

- “Can We Get Strong Gun Safety Legislation Passed?” Vi Seminar, **Palo Alto, CA**, July 18, 2022.
- Panelist, “Inside the Brain of the Mass Shooter and the Impact of Their Criminal Behavior,” Symposium on “The Law and Neuroscience of Mass Shootings,” held virtually at Fordham Law School, November 1, 2022.
- “*Bruen*, Permissive Gun Carrying, Constitutional Law, and Violent Crime,” Faculty Workshop, **Stanford Law School**, July 13, 2022.
- “Effectiveness of Permissive Gun Laws: Carry Laws, Stand Your Ground,” Annals Authors’ Conference, **University of Connecticut**, Hartford, April 7, 2022.
- “Permissive Gun Carrying Laws and Violent Crime,” ETH, Zurich, April 6, 2022; Law and Economics Workshop, **Tel Aviv University School of Law**, May 11, 2022.
- “Guns and Crime in American Life and Law,” **University of Zurich**, April 5, 2022.
- “Do Permissive Gun Carrying Laws Increase Violent Crime?” Applied Webinar at the **Sao Paulo School of Economics**, November 17, 2021.
- “Mass Shootings, Gun Laws and the Evolution of the Second Amendment – Where Do We Go from Here?” Minnesota Continuing Legal Education Webcast, November 2, 2021.
- Discussant of Richard Berk, “Firearm Sales in California Through the Myopic Vision of an Interrupted Time Series Causal Analysis,” Online Causal Inference Seminar, **Stanford University**, April 6, 2021.
- “The Impact of Legalized Abortion on Crime over the Last Two Decades,” American Law and Economics Association Meetings, **NYU School of Law**, May 18, 2019; Department of Economics, **University of California, Irvine**, October 13, 2020; **Harvard Kennedy School** Program in Inequality and Social Policy, March 22, 2021; Crime Seminar, **Northwestern Law School**, March 3, 2022.
- Discussant of Chika Okafor, “Prosecutor Politics: The Impact of Election Cycles on Criminal Sentencing in the Era of Rising Incarceration,” **Harvard Kennedy School** Program in Inequality and Social Policy, March 22, 2021.
- “Guns and Crime,” Economic Analysis of Crime course, **Bocconi University**, Dept. of Social and Political Sciences, March 8, 2021.
- Discussant, “How the Massachusetts assault weapons ban enforcement notice changed firearm sales,” Firearms and Policy session, **Assoc. for Public Policy Analysis and Management (APPAM) Virtual Fall Research Conference**, November 12, 2020.
- “We Must Confront the Threats to America’s Democracy,” Idaho Law Review Election Law Symposium, **University of Idaho College of Law**, October 20, 2020.
- “The Impact of Legalized Abortion on Crime over the Last Two Decades,” Department of Economics, **University of California, Irvine**, October 13, 2020.
- “The Death Penalty: Informing Policy Through Empirical Research,” Program in Criminal Law and Policy, **University of Arizona College of Law**, October 6, 2020.
- Discussant, “Mandatory Retirement Improved Performance on State Supreme Courts,” Law and Economics Session, **NBER Summer Institute**, July 22, 2020.

- Discussant, "Measuring Racial Discrimination in Bail Decisions," Crime Session, **NBER Summer Institute**, July 15, 2020.
- "Guns and Empirical Evidence in Second Amendment Litigation," **Columbia Law School**, March 24, 2020; **Yale Law School**, March 25, 2020 (Zoom Presentation).
- Panelist, "Guns, Schools, and Adolescents: A Disaster Waiting to Happen," Psychiatry Grand Rounds, Sapp Center for Science Teaching and Learning, **Stanford University School of Medicine**, February 20, 2020.
- "The Power of Data to Change Hearts, Minds, and Public Policy," Law and Policy Lab, **Stanford Law School**, February 13, 2020.
- "The Move to 'Guns Everywhere'," Inaugural Cooter-Rubinfeld Lecture, **University of California, Berkeley, Law School**, February 6, 2020.
- "The Swerve: A Legal and Empirical Evaluation of the Move to 'Guns Everywhere,'" Law and Economic Studies Workshop, **Columbia Law School**, September 23, 2019; Conference on Gun Rights and Regulations Outside the Home, **Duke Law School**, September 27, 2019.
- "Evidence to Guide Gun-related Public Policy," Conference on Gun Violence Epidemic, **Stanford Medical School**, September 16, 2019; Lecturer, Physicians and Social Responsibility Course, **Stanford Medical School**, October 7, 2019; Lecturer, Data Science Course, **Department of Statistics, Stanford University**, November 1, 2019.
- "The Legal and Political Battle over Gun Policy in America," **Hamilton College**, June 7, 2019.
- "Impact of Right to Carry Laws on Violent Crime," Public Policy colloquium, **Stanford Economics Department**, January 22, 2018; SPILS Methods Workshop, **Stanford Law School**, January 25, 2018; Quantlaw, **University of Arizona Law School**, March 2, 2018; Stanford/Berkeley Causal Inference Conference, **Stanford Graduate School of Business**, April 23, 2019; **Baldy Center/Law School Distinguished Speaker Series**, University at Buffalo School of Law, May 3, 2019; Conference on "Synthetic Controls and Related Methods," **Institute for Data, Systems, and Society, MIT**, May 21, 2019.
- "Guns, Abortion, and the Death Penalty: Informing Policy Through Empirical Research," Politics and Public Policy Lecture Series, **Stanford University**, April 1, 2019.
- "Dangers of Guns Carried Outside the Home for Protection," **GVPedia Conference**, Denver, Colorado, April 6, 2019.
- "Understanding California's Red Flag Law: How to Remove Guns from People Who Are a Threat to Themselves or Others," **Stanford Law School**, February 12, 2019.
- "Guns and Crime: Current Empirical and Legal Debates," **Fellowship Forum**, January 22, 2019.
- "Gun Policy in America at a Critical Juncture," SAFE, **Stanford Medical School**, September 17, 2018.
- "Empirical Evaluation of Law and Policy: The Battle for Truth," **Woodside Rotary Club**, September 12, 2018.
- "Discussing America's Second Amendment," **San Jose Museum of Quilts & Textiles**, July 15, 2018.
- "The Legal Battle to End the Death Penalty in Connecticut," **Law School of the University of Reggio Calabria, Italy**, June 15, 2018.
- Panelist, "Newtown and Gun Violence in the US, Humanity is Indivisible Series, **Stanford University**, May 31, 2018.
- "Gun Policy In California and the US," Human Rights Seminar; **Stanford Medical School**, May 29, 2018.



- "Gun Policy in the Wake of Parkland," Sigma Alpha Epsilon Leadership Speaker Series, **Stanford Law School**, March 13, 2018; Stanford in Government event, Haas Center, **Stanford University**, April 20, 2018.
- Panelist, Town Hall Meeting on Gun Violence with Congresswoman Jackie Speier, **Burlingame High School**, April 14, 2018.
- Moderator, In Studio Conversation with Berkeley Law School Dean Erwin Chemerinsky: "Defining the Limits of Free Speech," **Palo Alto League of Women's Voters**, March 27, 2018. <https://youtu.be/cqHEIAVoTLY>
- "More than Thoughts & Prayers," **American Constitution Society** and the **Federalist Society, U.C. Hastings School of Law**, March 14, 2018.
- Panelist, "Addressing Gun Violence," **American Constitution Society**, Stanford Law School, March 8, 2018.
- Panelist, "Public Carry: Defending Against Efforts to Expand Carry Laws," **National Gun Violence Prevention Meeting**, Washington, D.C., October 18, 2017.
- "Keynote Presentation: Right-to-Carry Laws and Violent Crime," Second Amendment Litigation & Jurisprudence Conference, **The Law Center to Prevent Gun Violence**, October 16, 2017.
- "The Latest Evidence on Abortion Legalization and Crime," Conference on Empirical Legal Studies, **Cornell University**, October 13, 2017.
- "Comey, Trump, and the Puzzling Pattern of Crime in 2015 and Beyond," **University of Texas School of Law and Economics Seminar**, April 24, 2017, Faculty Workshop, **UC Davis School of Law**, April 10, 2017; Law and Social Science Seminar, **Texas A&M University School of Law**, March 6, 2017; Quantlaw, **University of Arizona Law School**, February 17, 2017.
- Debate with Kent Scheidegger on Capital Punishment, Philosophy of Punishment Seminar, **JFK University School of Law**, March 18, 2017.
- "The Evidence on Guns and Gun Laws," **Federal Bar Council Program on Guns and Gun Laws** -- Rancho Mirage, California, February 23, 2017.
- "Guns, Crime and Race in America," Stanford's Center for Population Health Sciences, **Stanford Medical School**, October 17, 2016.
- "Evaluating the Death Penalty," Forum on California Propositions 62 and 66, **Stanford Law School**, September 14, 2016.
- "Empirical Analysis and the Fate of Capital Punishment," Colloquium, Presley Center for Crime and Justice Studies; **University of California, Riverside**, October 24, 2016.
- "Gun Violence and Mental Illness," Department of Psychiatry, **Stanford University**, August 25, 2016.
- "The Battle Over Gun Policy In America," Physicians and Social Responsibility" seminar; **Stanford Medical School**, October 3, 2016; **Bioethics Committee of the San Mateo County Medical Association**, April 27, 2016; **The League of Women Voters of Palo Alto**, April 19, 2016; Human Rights and Health Seminar, **Stanford University**, April 12, 2016; Bechtel International Center, **Stanford University**, February 23, 2016; Stanford in Government Seminar, Haas Center, **Stanford University**, February 2, 2016.
- American Economic Association Continuing Education Course "The Economics of Crime" (with Jens Ludwig), **AEA Annual Meeting**, San Francisco, January 5-7, 2016.
- "Race and Arbitrariness in the Connecticut Death Penalty," **University of Connecticut School of Law**, Nov. 20, 2015.

- *"Connecticut v. Santiago and the Demise of the Connecticut Death Penalty,"* Faculty Workshop, **Stanford Law School**, August 19, 2015.
- *"Do Handguns Make Us Safer? A State-Level Synthetic Controls Analysis of Right-to-Carry Laws,"* Second Amendment Conference, **Covington and Burling, New York**, May 14, 2015; **NBER Summer Institute**, Cambridge, MA, July 23, 2015; Faculty Workshop, **Stanford Law School**, November 11, 2015.
- *"U.S. Criminal Justice Under Siege : Will Becker or Beccaria Prevail?"* Faculty Seminar, **Bocconi University School of Law, Milan, Italy**, June 18, 2015.
- *"Can You Believe Econometric Evaluations of Law, Policy, and Medicine?"* **Stanford Law School**, Legal Theory Workshop, March 1, 2007; Faculty Workshop, **Tel Aviv University School of Law**, May 14, 2007; Faculty Workshop, **University of Haifa Law School**, May 16, 2007; Law and Economics Workshop, **Georgetown Law School**, September 19, 2007; Law and Economics Workshop, **St. Gallen Law School**, Switzerland, November 29, 2007; and Yale Law School, February 25, 2008; Law and Economics Workshop, **Swiss Institute of Technology**, Zurich, Switzerland, May 21, 2008; Faculty Workshop, **University of Virginia Law School**, October 24, 2008; Plenary Session, Latin American and Caribbean Law and Economics Association, **Universitat Pompeu Fabra (Barcelona)**, June 15, 2009; **Google, Milan, Italy**, June 8, 2015.
- Commentator: *"Throw Away the Jail or Throw Away The Key? The Effect of Punishment on Recidivism and Social Cost,"* by Miguel F. P. de Figueiredo, American Law and Economics Association Meetings, **Columbia Law School**, May 15, 2015.
- *"Broken Windows, Stop and Frisk, and Ferguson,"* 2015 Justice Collaboratory Conference: Policing Post-Ferguson, **Yale Law School**, April 17, 2015.
- *"Assessing the Development and Future of Empirical Legal Studies,"* **Stanford Law School** course on Modern American Legal Thought, February 25, 2015.
- Commentator: *"Payday Lending Restrictions and Crimes in the Neighborhood,"* by Yilan Xu, 9<sup>th</sup> Annual Conference on Empirical Legal Studies, **Boalt Hall**, Berkeley, CA, November 7, 2014.
- *"An Empirical Evaluation of the Connecticut Death Penalty Since 1973: Are There Unconstitutional Race, Gender and Geographic Disparities?"* Faculty Workshop, **Economics Department, Rice University**, Houston, TX, Feb. 18, 2014; Law and Economics Workshop, **University of Virginia Law School**, September 11, 2014; Faculty Colloquium, **University of San Diego School of Law**, October 3, 2014.
- *"What's Happening to the Death Penalty? A Look at the Battle in Connecticut,"* **Hamilton College**, Clinton, New York, June 6, 2014.
- Panel Member, Research Methods Workshop, Conference for Junior Researchers on Law and Society, **Stanford Law School**, May 15, 2014.
- *"Logit v. OLS: A Matter of Life and Death,"* Annual Meeting of the American Law and Economics Association, **University of Chicago**, May 9, 2014.
- *"Guns: Law, Policy, Econometrics,"* Second Amendment Litigation and Jurisprudence Conference, **Jenner & Block**, Chicago, May 8, 2014.
- *"The Impact of Antidiscrimination Law: The View 50 Years after the Civil Rights Act of 1964,"* **Renaissance Weekend**, Liguna Niguel, CA, Feb. 15, 2014.
- *"Concealed Carry and Stand Your Ground Law,"* **Renaissance Weekend**, Liguna Niguel, CA, Feb. 15, 2014.
- *"Reducing Gun Violence,"* Forum on Gun Violence Reduction, **Mountainview City Hall**, Mountainview, CA, Feb. 8, 2014.

- "Gun Policy Debate," **C-SPAN**. National Cable Satellite Corporation, Jan. 16, 2014. <<http://www.c-span.org/video/?317256-1/GunPoli>>.
- "Trial and Decision in the Connecticut Death Penalty Litigation," Faculty Workshop, **Stanford Law School**, November 20, 2013.
- "Rethinking America's Illegal Drug Policy," Law and Economics Workshop, **Harvard Law School**, April 20, 2010; NBER Conference, "Economical Crime Control," **Boalt Hall**, Berkeley, CA, January 16, 2010; **NBER Summer Institute** Pre-Conference "Economical Crime Control," July 23, 2009; **Whitney Center** Lecture Series, Hamden, CT, October 5, 2009; Law and Economics Workshop, **University of Chicago Law School**, October 13, 2009; Seminar for Spanish Law Professors, **Harvard Law School**, October 23, 2009; The Criminal Law Society, **Stanford Law School**, March 31, 2011, **University of Denver Sturm College of Law**, April 21, 2011; Law and Economics Workshop, **Boalt Hall**, Berkeley, CA, October 17, 2011; Shaking the Foundations Conference, **Stanford Law School**, November 2, 2013.
- "The Challenge to the Connecticut Death Penalty," **Yale Law School**, Death Penalty Clinic, November 5, 2007; Graduate Student Seminar, November 11, 2009; Stanford Program in International Legal Studies Seminar, **Stanford Law School**, Nov. 11, 2010; Faculty Workshop, **Stanford Law School**, June 8, 2011; Faculty workshop, **Duke Law School**, April 13, 2012; Program on Public Policy, **Stanford University**, May 2, 2012; Annual Meeting of the American Law and Economics Association, **Vanderbilt Law School**, Nashville, TN, May 18, 2013; Faculty Workshop, **University of Arizona Law School**, October 17, 2013; 8<sup>th</sup> Annual Conference on Empirical Legal Studies, **University of Pennsylvania Law School**, October 26, 2013.
- Commentator: "How to Lie with Rape Statistics" by Corey Rayburn Yung, 8<sup>th</sup> Annual Conference on Empirical Legal Studies, **University of Pennsylvania Law School**, October 2013.
- "An Empirical Look at Gun Violence in the U.S." **University of Arizona Law School**, October 17, 2013
- Discussant, "Sex Offender Registration and Plea Bargaining," **NBER Labor Summer Institute**, Cambridge, MA, July 25, 2013.
- "What Works in the War Against Crime?" **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- Seminar Presentation, "Statistics and the Streets – Curbing Crime, Realities of the Death Penalty, and Successes in Public Safety," **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- Flashes of Genius (Glimpses of Extra-ordinarily Novel Thinking) -- "Stemming Gun Violence," **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- "Can Laws Reduce Crime?" Safe Oakland Speakers Series, Holy Names University, Oakland, CA, May 1, 2013, <http://www.ustream.tv/channel/safe-oakland-speaker-series>
- Presentation on "The Death Penalty in America" on a panel on "human rights and criminal justice systems in the world," Science for Peace conference at Bocconi University in Milan, Italy, November 15, 2012. <http://www.fondazioneveronesi.it/scienceforpeace2012/>
- Seminar Presentation, "America's Criminal Justice System," **Renaissance Weekend**, Santa Monica, CA., Feb. 19, 2012.
- "Statistical Inference, Regression Analysis and Common Mistakes in Empirical Research," SPILLS Fellow's Workshop, **Stanford Law School**, February 2, 2012.
- "New Evidence in the 'More Guns, Less Crime' Debate: A Synthetic Controls Approach," Conference on Empirical Legal Studies, **Northwestern Law School**, November 4, 2011.

- "Drug Legalization and its Alternatives," *Lessons from the Economics of Crime: What Works in Reducing Offending?* **CESifo Venice Summer Institute Workshop**, July 22, 2011.
- "Incapacitating Addictions: Drug Policy and American Criminal Justice," in Rethinking the War on Drugs through the US-Mexico Prism," **Yale Center for the Study of Globalization**, May 12, 2011.
- Plenary Session: Flashes of Genius (Glimpses of Extra-ordinarily Novel Thinking) -- "Has Legalized Abortion Reduced Crime?" **Renaissance Weekend**, Liguna Niguel, CA., Feb. 18, 2011.
- "An Evidence-Based Look at the More Guns, Less Crime Theory (after Tucson)" The American Constitution Society for Law and Policy (ACS), **Stanford Law School**, January 25, 2011; **Renaissance Weekend**, Liguna Niguel, CA., Feb. 19, 2011; "Faculty Forum" at the External Relations Office, **Stanford Law School**, April 5, 2011.
- "Empirical Evaluation of Law: The Dream and the Nightmare," SPILS Fellows Lecture, **Stanford Law School**, January 15, 2015; Legal Studies Workshop, **Stanford Law School**, Feb. 7, 2011; **Renaissance Weekend**, Liguna Niguel, CA., Feb. 20, 2011; **University of Denver Sturm College of Law**, April 22, 2011; Presidential Address, Annual Meeting of the American Law and Economics Association, **Columbia University**, May 20, 2011.
- Death Sentencing in Connecticut," **American Society of Criminology Annual Meeting**, San Francisco, Nov. 17, 2010.
- "The Impact of Right to Carry Laws and the NRC Report: Lessons for the Empirical Evaluation of Law and Policy," Conference on Empirical Legal Studies, **Yale Law School**, Nov. 6, 2010.
- Comment on Bushway and Gelbach, "Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model," Conference on Empirical Legal Studies, **Yale Law School**, Nov. 6, 2010.
- Commentator, "A Test of Racial Bias in Capital Sentencing," **NBER Political Economy Program Meeting**, April 23, 2010.
- "The (Lack of a) Deterrent Effect of Capital Punishment," Faculty Workshop, **University of Chicago Economics Department**, October 21, 2009.
- Keynote Address, "The Evolution of Econometric Evaluation of Crime and Deterrence," 1st Paris& Bonn Workshop on Law and Economics: The Empirics of Crime and Deterrence, **University of Paris Ouest Nanterre**, September 24, 2009.
- Comment on Cook, Ludwig, and Samaha, "Gun Control after *Heller*: Litigating Against Regulation," NBER Regulation and Litigation Conference, **The Boulders**, Carefree, Arizona, September 11, 2009.
- "Impact of the Death Penalty on Murder in the US," Faculty Workshop, Law School, **Universitat Pompeu Fabra (Barcelona)**, June 18, 2009.
- Comment on Joanna Shepherd's "The Politics of Judicial Opposition," Journal of Institutional and Theoretical Economics Conference, **Kloster Eberbach, Germany**, June 12, 2009.
- "The Great American Crime Drop of the '90s: Some Thoughts on Abortion Legalization, Guns, Prisons, and the Death Penalty," **Hamilton College**, Clinton, NY, June 5, 2009.
- "The Impact of the ADA on the Employment and Earnings of the Disabled," **American Law and Economics Association Meetings**, University of San Diego, May 15, 2009.
- "Crime and Punishment in the United States," **Eastern State Penitentiary, Yale Alumni Event**, Philadelphia, PA, April 26, 2009.

- “Measuring Culpability in Death Penalty Cases,” Conference on Applications of Economic Analysis in Law, **Fuqua School of Business, Duke University**, April 18, 2009.
- “Autopsy of a Financial Crisis,” Workshop on New International Rules and Bodies for Regulating Financial Markets, **State University of Milan**, March 23, 2009.
- “Yet Another Refutation of the More Guns, Less Crime Hypothesis – With Some Help From Moody and Marvell, Law and Economics Workshop, **NYU Law School**, March 10, 2009.
- Intelligence-Squared Debate: “Guns Reduce Crime,” **Rockefeller University**, New York, October 28, 2008.
- “The D.C. Handgun Controls: Did the Supreme Court’s Decision Make the City Safer?” Debate, **The Contemporary Club of Albemarle**, Charlottesville, VA, October 23, 2008.
- “Evaluating the Empirical Claims of the Woman-Protective Anti-Abortion Movement,” Panel on The Facts of the Matter: Science, Public Health, and Counseling, Yale Conference on the Future of Sexual and Reproductive Rights, **Yale Law School**, October 11, 2008.
- “Empirical Evaluation of Gun Policy,” **Harvard Law School**, October 9, 2008.
- “Assessing the Relative Benefits of Incarceration: The Overall Change Over the Previous Decades and the Benefits on the Margin,” **Russell Sage Foundation**, New York, May 3, 2007; Law and Economics Workshop, **Tel Aviv University School of Law**, May 28, 2008.
- Death Penalty Debate with Orin Kerr, Bloggingheads, April 11, 2008.
- “Evaluating Connecticut’s Death Penalty Regime,” Faculty Public Interest Conversation, **Yale Law School**, April 9, 2008.
- “The Death Penalty in Connecticut and the United States,” **The Whitney Center**, Hamden, CT, November 5, 2007; Seminar on Advanced Criminal Law: Criminal Sentencing and the Death Penalty, **Fordham Law School**, April 8, 2008; Law and Economics Workshop, **Swiss Institute of Technology**, Zurich, Switzerland, May 20, 2008.
- Radio Interview, “The Death of Capital Punishment?” Morning Edition: Where We Live. WNPR. Connecticut, March 10, 2008.
- Comment on Thomas Dee’s “Born to Be Mild: Motorcycle Helmets and Traffic Safety,” **American Economics Association Meetings**, New Orleans, Louisiana, January 4, 2008.
- “The Empirical Revolution in Law and Policy: Jubilation and Tribulation,” **Keynote Address, Conference on Empirical Legal Studies, NYU Law School**, November 9, 2007.
- “The Optimal Rate of Incarceration,” **Harvard Law School**, October 26, 2007.
- “Empirical Evaluation of Law: The Impact on U.S Crime Rates of Incarceration, the Death Penalty, Guns, and Abortion,” Law and Economics Workshop, **St. Gallen Law School, Switzerland**, June 25, 2007.
- Comment on Eric Baumer’s “A Comprehensive Assessment of the Contemporary Crime Trends Puzzle,” Committee on Law and Justice Workshop on Understanding Crime Trends, **National Academy of Sciences**, Washington, D.C., April 25, 2007.
- Comment on Bernard Harcourt, Third Annual Criminal Justice Roundtable Conference, **Yale Law School**, “Rethinking the Incarceration Revolution Part II: State Level Analysis,” April 14, 2006.
- “Corporate Governance in America: The Disney Case,” **Catholic University Law School**, Milan, Italy, March 19, 2007.

- “The U.S Tort System,” (Latin American) Linkages Program, **Yale Law School**, February 13, 2007.
- Panel Member, “Guns and Violence in the U.S.,” **Yale University, International Center**, January 24, 2007.
- “Economic Models of Crime and Punishment,” Punishment: The U.S. Record: A Social Research Conference at **The New School**, New York City, Nov. 30, 2006
- Comment on Baldus et al, “Equal Justice and the Death Penalty: The Experience of the United States Armed Forces, Conference on Empirical Legal Studies, **University of Texas Law School**, Austin, Texas, October 27, 2006.
- “Empirical Evaluation of Law: The Promise and the Peril,” **Harvard Law School**, October 26, 2006.
- “Estimating the Impact of the Death Penalty on Murder,” Law and Economics Workshop, **Harvard Law School**, September 12, 2006; Conference on Empirical Legal Studies, **University of Texas Law School**, October 28, 2006; Joint Workshop, Maryland Population Research Center and School of Public Policy, **University of Maryland**, March 9, 2007.
- “Why Are Auto Fatalities Dropping so Sharply?” **Faculty Workshop, Wharton**, Philadelphia, PA, April 19, 2006.
- “The Law of Racial Profiling,” Law and Economic Perspectives on Profiling Workshop, **Northwestern University Department of Economics**, April 7, 2006.
- “Landmines and Goldmines: Why It’s Hard to Find Truth and Easy To Peddle Falsehood in Empirical Evaluation of Law and Policy,” **Rosenthal Lectures, Northwestern University School of Law**, April 4-6, 2006.
- “The Impact of Legalized Abortion on Crime,” **American Enterprise Institute**, March 28, 2006.
- “The Impact of Damage Caps on Malpractice Claims: Randomization Inference with Difference-in-Differences,” **Conference on Medical Malpractice, The Rand Corporation**, March 11, 2006.
- “Powerful Evidence the Death Penalty Deters?” **Leighton Homer Surbeck Chair Lecture, Yale Law School**, March 7, 2006.
- “Uses and Abuses of Empirical Evidence in the Death Penalty Debate,” Faculty Workshop, **University of Connecticut Law School**, October 18, 2005; Faculty Workshop, **UCLA Law School**, February 3, 2006; Law and Economics Workshop, **Stanford Law School**, February 16, 2006; ; Law Faculty, **University of Cambridge, Cambridge, England**, February 28, 2006; **University of Illinois College of Law**, Law and Economics Workshop, March 2, 2006; Faculty Workshop, **Florida State University Law School**, March 30, 2006; **ALEA**, Berkeley, CA May 6, 2006; **University of Chicago Law School**, Law and Economics Workshop, May 9, 2006.
- “Is Gun Control Illiberal?” Federalist Society Debate with Dan Kahan at Yale Law School, January 31, 2006.
- “Witness to Deception: An Insider’s Look at the Disney Trial,” **2005-2006 Distinguished Lecture, Boston University School of Law**, November 10, 2005; Center for the Study of Corporate Law, **Yale Law School**, November 3, 2005; **Law Offices of Herbert Smith, London, England**, February 23, 2006; Law Faculty, **University of Cambridge, Cambridge, England**, February 27, 2006.
- “Understanding the Surprising Fall in Crime in the 1990s,” **Rotary Club**, Orange, CT, August 5, 2005; Faculty Workshop, **Yale School of Management**, September 21, 2005.
- Panel Member, “The Board’s Role in Corporate Strategy,” The Yale Global Governance Forum, **Yale School of Management**, September 8, 2005.
- “Crime and Abortion,” **Museo de la Ciudad de Mexico**, Mexico City, October 20, 2003.



- “Allocating Resources towards Social Problems and Away From Incarceration as a Means of Reducing Crime,” **MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice**, San Francisco, CA, February 28, 2003.
- “Shooting Down the More Guns, Less Crime Hypothesis,” **Stanford Law School**, Law and Economics Seminar, January 28, 2003; Faculty Workshop, Center for the Study of Law and Society, **Boalt Hall**, University of California, Berkeley, Feb. 24, 2003; Development Workshop, **Stanford Law School**, April 25, 2003; Faculty Workshop, **Stanford Law School**, July 2, 2003; Law and Public Affairs Program Workshop, **Princeton University**, September 29, 2003; Stanford Alumni Weekend, **Stanford University**, October 17, 2003; Faculty Workshop, **CIDE**, Mexico City, October 20, 2003.
- “The Impact of Legalized Abortion on Teen Childbearing,” **NBER Labor Summer Institute**, Cambridge, MA, July 30, 2002.
- “Do Concealed Handgun Laws Reduce Crime?” Faculty Workshop, **Stanford Law School**, October 4, 2000; First-Year Orientation, **Stanford Law School**, September 5, 2001; Faculty Workshop, **Harvard Law School**, April 26, 2002; Faculty Workshop, **Columbia Law School**, April 29, 2002.
- “The Evolution of Employment Discrimination Law in the 1990s: An Empirical Investigation,” Fellows Workshop, American Bar Foundation, February 11, 2002.
- “The Role of Discounting in Evaluating Social Programs Impacting on Future Generations: Comment on Arrow and Revesz,” Colloquium on Distributive Justice, **Stanford Law School**, Oct. 18, 2001.
- “The Impact of Wrongful Discharge Laws,” **NBER Labor Summer Institute**, Cambridge, MA, July 30, 2001; Labor and Employment Seminar, **NYU Law School**, October 16, 2001; Faculty Workshop, **Stanford Law School**, September 18, 2002; **Yale Law School**, January, 2004.
- “Racial Profiling: Defining the Problem, Understanding the Cause, Finding the Solution,” **American Society of Criminology Conference**, San Francisco, CA, November 15, 2000.
- “Institutional Architecture for Building Private Markets,” Conference on “Latin America and The New Economy” at **Diego Portales University** in Santiago, Chile, October 26, 2000.
- “The History and Current Status of Employment Discrimination Law in the United States,” Unicapital School of Law, (Centro Universitario Capital), Sao Paulo, Brazil, March 10, 2000.
- “Corporate Governance in Developing Countries: Opportunities and Dangers,” Conference on Neoliberal Policies for Development: Analysis and Criticism,” University of Sao Paulo Law School, March 13, 2000
- “Legalized Abortion and Crime,” Law and Economics Workshop, **University of Pennsylvania Law School**, September 21, 1999; Faculty Workshop, **Yale Law School**, September 27, 1999; **John Jay College of Criminal Justice**, October 7, 1999; Faculty Workshop, **Quinnipiac Law School**, October 13, 1999; Faculty Workshop, **University of Connecticut Law School**, October 19, 1999; **University of Virginia Law School**, October 25, 1999; Faculty Workshop, **Baruch College**, November 9, 1999; MacArthur Foundation Social Interactions and Economic Inequality Network Meeting, **Brookings Institution**, December 4, 1999; Faculty Workshop, **NYU Law School**, January 21, 2000; Faculty Workshop, **University of San Diego Law School**, February 18, 2000; Public Economics Workshop, Department of Economics, **Stanford University**, April 28, 2000; Law and Economics Workshop, **University of California at Berkeley Law School**, September 18, 2000; Faculty Workshop, **Cornell Law School**, September 26, 2000; OB-GYN Grand Rounds, **Stanford Medical School**, October 2, 2000; **Center for Advanced Studies in the Behavioral Sciences**, October 11, 2000; Faculty Workshop, **Graduate School of Business**, February 5, 2002.
- Panel member, Session on Executive Compensation, Director's College, **Stanford Law School**, March 23, 1999.



- “Exploring the Link Between Legalization of Abortion in the 1970s and Falling Crime in the 1990s,” Law and Economics Workshop, **Harvard Law School**, March 16, 1999; Law and Economics Workshop, **University of Chicago Law School**, April 27, 1999; Faculty Workshop, **Stanford Law School**, June 30, 1999.
- “Is the Increasing Reliance on Incarceration a Cost-Effective Strategy of Fighting Crime?” Faculty Workshop, **University of Wisconsin School of Social Science**, February 19, 1999.
- “What Do We Know About Options Compensation?” Institutional Investors Forum, **Stanford Law School**, May 29, 1998.
- Commentator on Orlando Patterson’s presentation on “The Ordeal of Integration,” **Stanford Economics Department**, May 20, 1998.
- “Understanding The Time Path of Crime,” Presentation at Conference on Why is Crime Decreasing? **Northwestern University School of Law**, March 28, 1998; Faculty Workshop, **Stanford Law School**, September 16, 1998; Faculty Workshop, **University of Michigan Law School**, February 18, 1999.
- Commentator, Conference on Public and Private Penalties, the **University of Chicago Law School**, Dec. 13-14, 1997.
- “Some Thoughts on Affirmative Action,” Presentation at a conference on Rethinking Equality in the Global Society, **Washington University School of Law**, November 10, 1997.
- Commentator on Chris Jencks’ Presentation on Welfare Policy, **Stanford Economics Department**, October 8, 1997.
- “The Impact of Race on Policing, Arrest Patterns, and Crime,” Faculty Workshop, **Stanford Law School**, September 10, 1997; Law and Economics Workshop, **University of Southern California Law School**, October 23, 1997; Law and Economics Workshop, **Columbia University Law School**, November 24, 1997; Law and Economics Workshop, Haas School of Business, **University of California at Berkeley**, February 19, 1998; Annual Meeting of the American Law and Economics Association, **University of California at Berkeley**, May 8, 1998; Conference on the Economics of Law Enforcement, **Harvard Law School**, October 17, 1998.
- “Crime in America: Understanding Trends, Evaluating Policy,” **Stanford Sierra Camp**, August 1997.
- “Executive Compensation: What Do We Know?” TIAA-CREF Committees on Corporate Governance and Social Responsibility, Center for Economic Policy Research, **Stanford University**, June 27, 1997; NASDAQ Director’s Day, **Stanford University**, June 30, 1997.
- Panel Chair, Criminal Law (Theory), Criminal Law (Empirical), and Labor/Discrimination/Family Law, American Law and Economics Association, **University of Toronto Law School**, May 9-10, 1997.
- Commentator, “Diversity in Law School Hiring,” **Stanford Law School**, February 25, 1997.
- Keynote Speaker, “The Optimal Rate of Crime,” 11th Annual Conference, **The Oklahoma Academy for State Goals**, Tulsa, Oklahoma, May 7, 1996.
- Panel member, Session on Executive Compensation, Director’s College, **Stanford Law School**, March 28-29, 1996.
- “The Power of Law: Can Law Make a Difference in Improving the Position of Women and Minorities in the Labor Market?” The Fellows of the **American Bar Foundation**, Baltimore, Maryland, February 3, 1996.
- “Public Action, Private Choice and Philanthropy: Understanding the Sources of Improvement in Black Schooling Quality in Georgia, 1911-1960,” **Stanford Faculty Workshop**, January 24, 1996; Faculty Workshop, **University of Virginia Law School**, January 22, 1997; **National Bureau of Economic Research**, Cambridge, Massachusetts, Labor Studies Conference, April 3, 1998.

- Commentator, "The Effect of Increased Incarceration on Crime," Meetings of the **American Economics Association**, San Francisco, January 6, 1996.
- Commentator, Symposium on Labor Law, **University of Texas Law School**, November 10-11, 1995.
- Panel Member, Symposium on Criminal Justice, **Stanford Law School**, October 6-7, 1995.
- Commentator, "The Litigious Plaintiff Hypothesis," Industrial and Labor Relations Conference, **Cornell University**, May 19, 1995.
- Commentator on Keith Hylton's, "Fee Shifting and Predictability of Law," Faculty Workshop, **Northwestern University School of Law**, February 27, 1995.
- "The Selection of Employment Discrimination Disputes for Litigation: Using Business Cycle Effects to Test the Priest/Klein Hypothesis," **Stanford University**, Law and Economics Seminars, October 31, 1994.
- "Is the United States at the Optimal Rate of Crime?" Faculty Workshop, **Indiana University School of Law**, Indianapolis, November 18, 1993; Faculty Workshop, **Northwestern University School of Law**, April 18, 1994; Law and Economics Workshop, **Stanford Law School**, April 28, 1994; Meetings of the American Law and Economics Association, **Stanford Law School**, May 13, 1994; **American Bar Foundation**, September 7, 1994; Faculty Workshop, **DePaul Law School**, September 21, 1994; Law and Economics Workshop, **University of Chicago Law School**, October 11, 1994; Faculty Seminar, **Stanford Law School**, October 31, 1994; Law and Economics Luncheon, **Stanford Law School**, November 1, 1994; Faculty Seminar Workshop, **University of Illinois College of Law**, Champaign, November 22, 1994; Law and Economics Workshop, **Harvard Law School**, November 29, 1994; School Alumni Luncheon, Chicago Club, December 13, 1994; **Northwestern Law School**; Law and Economics Workshop, **Yale Law School**, February 1, 1996; Faculty Workshop, **Cornell Law School**, April 10, 1996; Faculty Workshop, **Tokyo University Law School**, June 4, 1996; Panel on "The Economics of Crime," **Western Economics Association** Meeting, San Francisco, July 1, 1996.
- "The Broad Path of Law and Economics," Chair Ceremony, **Northwestern University School of Law**, September 30, 1994.
- Commentator on Paul Robinson's "A Failure of Moral Conviction," **Northwestern University School of Law**, September 20, 1994.
- "The Do's of Diversity, The Don'ts of Discrimination," Kellogg School of Business, **Northwestern University**, May 17, 1994.
- "Does Law Matter in the Realm of Discrimination?" **Law and Society Summer Institute**, Pala Mesa Lodge, Fallbrook, California, June 25, 1993.
- Commentator, "The Double Minority: Race and Sex Interactions in the Job Market," Society for the Advancement of Socio-Economics, **New School for Social Research**, March 28, 1993.
- "The Effects of Joint and Several Liability on Settlement Rates: Mathematical Symmetries and Meta-Issues in the Analysis of Rational Litigant Behavior," Economic Analysis of Civil Procedure, **University of Virginia School of Law**, March 26, 1993.
- Debate with Richard Epstein on Employment Discrimination Law, **Chicago Federalist Society**, February 23, 1993.
- Panel Chair, "Optimal Sanctions and Legal Rules in Tort and Criminal Law," Meetings of Annual Association of Law and Economics, **Yale Law School**, May 15, 1992.
- Panel Member, "The Law and Economics of Employment at Will," **The Institute For Humane Studies**, Fairfax, Virginia, March 27, 1992.

- "The Efficacy of Title VII," Debate with Professor Richard Epstein, **University of Chicago Law School**, February 26, 1992.
- Moderator, "Using Testers to Demonstrate Racial Discrimination," **University of Chicago Law School**, February 13, 1992.
- "Law & Macroeconomics: The Effect of the Business Cycle on Employment Discrimination Litigation," Law and Society Workshop, **Indiana University**, November 6, 1991; Faculty Workshop, **University of North Carolina Law School**, Chapel Hill, November 8, 1991; Faculty Workshop, **Northwestern University School of Law**, December 11, 1991; Law and
- Economics Conference, **Duquesne Law School**, March 14, 1992; **University of Chicago Law School**, April 2, 1992.
- Panel Chair and Commentator, "New Perspectives on Law and Economics," **Society for the Advancement of Socioeconomics**, Stockholm, June 17, 1991; **Law and Society Meetings**, Amsterdam, June 29, 1991.
- Panel Chair, "Regulation of International Capital Markets," **Law and Society Meetings**, Amsterdam, June 27, 1991.
- Panel Chair, "The Law and Economics of Discrimination," American Association of Law and Economics, **University of Illinois Law School**, May 24, 1991.
- "The Economics of Employment Discrimination Law," **Industrial Relations Research Association**, Chicago, Illinois, March 4, 1991.
- "Does Current Employment Discrimination Law Help or Hinder Minority Economic Empowerment?" Debate with Professor Richard Epstein, The Federalist Society, **Northwestern Law School**, February 26, 1991.
- Panel Member, "The Law and Economics of Employment Discrimination," **AALS Annual Meeting**, Washington, D.C., January 6, 1991.
- "Re-Evaluating Federal Civil Rights Policy," Conference on the Law and Economics of Racial Discrimination in Employment, **Georgetown University Law Center**, November 30, 1990.
- "Opting for the British Rule," Faculty Seminar, **Northwestern Law School**, September 11, 1990; Faculty Seminar, **University of Virginia Law School**, September 14, 1990; Law and Economics Seminar, **University of Michigan Law School**, October 18, 1990; Faculty Workshop, **NYU Law School**, November 14, 1990; Faculty Workshop, **University of Florida Law School**, March 18, 1991.
- "The Effects of Fee Shifting on the Settlement Rate: Theoretical Observations on Costs, Conflicts, and Contingency Fees," at the **Yale Law School Conference "Modern Civil Procedure: Issues in Controversy,"** June 16, 1990.
- "Studying the Iceberg From Its Tip?: An Analysis of the Differences Between Published and Unpublished Employment Discrimination Cases," **Law and Society Meetings**, Berkeley, California, May 31, 1990.
- Panel Discussion on Tort Reform, **University of Pennsylvania Law School**, April 27, 1990.
- Panel Discussion of "The Role of Government in Closing the Socio-Economic Gap for Minorities," at the Federalist Society National Symposium on "The Future of Civil Rights Law," **Stanford Law School**, March 16, 1990.
- "Continuous versus Episodic Change: The Impact of Affirmative Action and Civil Rights Policy on the Economic Status of Blacks," **University of Virginia Economics Department**, February 15, 1990; **Princeton University Department of Economics**, February 21, 1990 (with James Heckman); Law & Economics Workshop, **University of Toronto Law School**, October 8, 1991.

- "Sex Discrimination in the Workplace: An Economic Perspective," Fellows Seminar, **American Bar Foundation**, October 16, 1989.
- "The Changing Nature of Employment Discrimination Litigation," Law and Economics Workshop, **Columbia Law School**, March 23, 1989; Faculty Seminar, **University of Virginia Law School**, March 24, 1989; Law and Economics Workshop, **University of Chicago**, April 25, 1989; **Law & Society Meeting**; Madison, Wisconsin, June 8, 1989; Labor Economics Workshop, **University of Illinois**, Chicago, November 1, 1989; Law & Economics Workshop, **University of Pennsylvania Law School**, November 9, 1989; Law and Economics Seminar, **University of California at Berkeley**, October 4, 1990; Law and Social Science Workshop, **Northwestern University**, February 3, 1991; Law and Economics Seminar, **Stanford Law School**, March 21, 1991; Faculty Workshop, **Cornell Law School**, April 3, 1991; Visiting Committee, **Northwestern Law School**, April 5, 1991.
- "Law & Economics: The Third Phase," The Association of General Counsel, **Northwestern University School of Law**, October 14, 1988.
- "Employment Discrimination Litigation," **Northwestern Law School** Alumni Monthly Loop Luncheon. **Chicago Bar Association**, May 31, 1988.
- "The Morality of the Death Penalty." A debate with Ernest Van Den Haag. **Northwestern University School of Law**, April 19, 1988.
- "Models of Deregulation of International Capital Markets." A presentation with David Van Zandt, Faculty Seminar, **Northwestern University School of Law**, April 1, 1988; Visiting Committee, May 5, 1988.
- "Is Title VII Efficient?" A debate with Judge Richard Posner, Faculty Seminar, **Northwestern University School of Law**, November 20, 1987.
- "The Senate's Role in Confirming Supreme Court Nominees: The Historical Record," **Northwestern University School of Law**, September 22, 1987.
- "Diverting the Coasean River: Incentive Schemes to Reduce Unemployment Spells," **Yale Law School** Civil Liability Workshop, March 30, 1987; Faculty Seminar, **Northwestern University School of Law**, March 18, 1987; **University of Southern California Law Center**, May 1, 1987; and Seminar in Law and Politics, Department of Political Science, **Northwestern University**, May 8, 1987; Labor Workshop, Department of Economics, **Northwestern University**, October 27, 1987; **AALS Annual Meeting**, New Orleans, January 7, 1989.
- "Women in the Labor Market--Are Things Getting Better or Worse?" **Hamilton College**, February 23, 1987.
- "The Changing Relative Quit Rates of Young Male and Female Workers," **Hamilton-Colgate Joint Faculty Economics Seminar**, February 23, 1987.
- "Living on Borrowed Money and Time--U.S. Fiscal Policy and the Prospect of Explosive Public Debt," **Orange Rotary Club**, February 22, 1985.
- "Capital Punishment in the Eighties," **Hamilton College**, April 6, 1981.
- "Terms and Conditions of Sale Under the Uniform Commercial Code," Executive Sales Conference, **National Machine Tool Builders' Association**, May 12, 1980.

## AWARDS

- **47th Tikkun Olam Award**, The Haiti Jewish Refugee Legacy Project, February 2014, "Awarded for incredibly significant work that explores and inspires the search for justice and taking serious, correct and timely action." Tikkun Olam is a Hebrew phrase that means 'repairing the world.'  
<https://haitiholocaustsurvivors.wordpress.com/guest-posts/47th-tikkun-olam-award-to-professor-john-j-donohue-iii/>

## PROFESSIONAL ACTIVITIES

- Member, Stanford Law School academic reading group evaluating the criminal law opinions of U.S. Supreme Court nominee Judge Ketanji Brown Jackson for the ABA Standing Committee on the Federal Judiciary, March 2022.
- Member, USF Institute for Nonviolence and Social Justice Leadership Council, University of San Francisco, June 2021 – present.
- Member, Criminal Justice Expert Panel, @CJExpertPanel, providing information on the relevance of criminal justice research to current events, beginning April 2021.
- Statistical Consultant to the Fairness Committee of the 9th Circuit Court of Appeals investigating issues of sentencing disparities by race, ethnicity, and gender in federal criminal sentencing, March 2018 – March 2020.
- Legal Scholarship Network Advisory Board Member, SSRN.
- Member, Committee on Law and Justice, National Research Council, October 2011 – December 2018.
- Fellow of the Society for Empirical Legal Studies, 2015 - present.
- Member, International Advisory Council, Economic Order Study Center, Federal University of San Paolo, Brazil.
- Co-Editor (with Steven Shavell), American Law and Economics Review, May 2006 – August 2012.
- President, American Law and Economics Association, May 2011 – May 2012.
- Co-President, Society for Empirical Legal Studies, November 2011 - August 2012. Member, Board of Directors from November 2011 - November 2014.
- Testified before the Connecticut Legislature in Support of Senate Bill 1035 and House Bill 6425 (A Bill to Eliminate the Death Penalty), March 7, 2011; Testified again before the Connecticut Judiciary Committee on March 14, 2012.
- Member of the Special Committee on ALI Young Scholars Medal, October 2009 – February 2011.
- Vice-President/President Elect, American Law and Economics Association, June 2010 – May 2011.
- Secretary-Treasurer, American Law and Economics Association, June 2009 – May 2010.
- Board of Advisors, Yale Law School Center for the Study of Corporate Law, July 2004 – August 2010.
- Evaluated the Connecticut death penalty system: “Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation from 4600 murders to One Execution,” [http://works.bepress.com/john\\_donohue/137/](http://works.bepress.com/john_donohue/137/).
- Member, Panel on Methods for Assessing Discrimination, National Academy of Sciences, September 2001 – June 2004. Resulting Publication: National Research Council, Measuring Racial Discrimination (2004), <http://www.nap.edu/catalog/10887.html>.
- Member, National Science Foundation Review Panel, Law and Social Sciences, September, 1999 – April 2001.
- Editorial Board, Journal of Empirical Legal Studies, July 2003 – present.
- Editorial Board, International Review of Law and Economics, October 1999 – present.
- Editorial Board, Law and Social Inquiry, February 2000 – present.

- Board of Editors, American Law and Economics Review, August 1998 – April 2013.
- Consultant, Planning Meeting on Measuring the Crime Control Effectiveness of Criminal Justice Sanctions, National Academy of Sciences, Washington, D.C., June 11, 1998.
- Member, Board of Directors, American Law and Economics Association, June 1994-May 1997. Member, ALEA Nominating Committee, July 1995-May 1996. Member, Program Committee, July 1996-May 1998 and July 2000 – May 2002.
- Statistical Consultant, 7<sup>th</sup> Circuit Court of Appeals Settlement Conference Project (December, 1994).
- Testified before U.S. Senate Labor Committee on evaluating the Job Corps, October 4, 1994.
- Assisted the American Bar Association Standing Committee on the Federal Judiciary in evaluating the qualifications of Ruth Bader Ginsburg (June 1993) and David Souter (June, 1990).
- Chair, AALS Section on Law and Economics, January 1990-January 1991.
- Economic Consultant to Federal Courts Study Committee. Analyzing the role of the federal courts and projected caseload for Judge Richard Posner's subcommittee. February 1989-March 1990.
- Member, 1990 AALS Scholarly Papers Committee.
- Member, Advisory Board, Corporate Counsel Center, Northwestern University School of Law. Since December 1987.
- Associate Editor, Law and Social Inquiry. Summer 1987-December 1989.
- Interviewed Administrative Law Judge candidates for U.S. Office of Personnel Management. Chicago, Illinois. May 23, 1988.
- Member, Congressman Bruce Morrison's Military Academy Selection Committee. Fall 1983.
- 1982 Candidate for Democratic Nomination, Connecticut State Senate, 14th District (Milford, Orange, West Haven).

#### PRO BONO LEGAL WORK

- Co-wrote amicus brief for the United States Supreme Court for "Social Scientists and Public Health Researchers in Support of Respondents" in *New York State Rifle & Pistol Association v. Bruen*, which discusses the evidence that right-to-carry laws increase violent crime in the brief, September 21, 2021.
- Co-wrote amicus brief for the United States Supreme Court for "Public Health Researchers and Social Scientists in Support of Respondents" in *New York State Rifle & Pistol Association v. City of New York*, which quotes my article *Right-to-Carry Laws and Violent Crime* in the brief, August 12, 2019.
- Co-wrote amicus brief for the 9<sup>th</sup> Circuit Court of Appeals for "Empirical Scholars Concerning Deterrence and the Death Penalty In Support of Petitioner/Appellee," *Jones v. Davis*, No. 09 Cv. 2158 CJC, which discusses the lack of deterrence of the death penalty, March 6, 2015.
- Death Penalty case: Heath v. Alabama. Fall 1986-Fall 1989.
- Wrote brief opposing death sentence in Navy spy case. Court ruled in favor of defendant John A. Walker on September 13, 1985.
- Staff Attorney, Neighborhood Legal Services, January-July 1981.
- Appealed sentence of death for Georgia defendant to the United States Supreme Court. Sentence vacated on May 27, 1980. Baker v. Georgia.

- Court-appointed representation of indigent criminal defendant in District of Columbia Superior Court, February-July 1980.

#### **RESEARCH GRANTS**

- Stanford University Research Fund, January 1997 and January 1998.
- The National Science Foundation (project with James Heckman), December 1992; (project with Steve Levitt), July 1997.
- Fund for Labor Relations Studies, University of Michigan Law School, March 1988.

#### **BAR ADMISSIONS**

- Connecticut - October 1977; District of Columbia - March 1978 (Currently Inactive Status); United States Supreme Court - November 3, 1980; U.S. District Court for the District of Connecticut – February 14, 1978.

#### **PROFESSIONAL and HONORARY ASSOCIATIONS**

- American Academy of Arts and Sciences (since April 2009).
- Research Associate, National Bureau of Economic Research (since October 1996) – in Law and Economics and Labor Studies.
- Stanford Center for Racial Justice – August 2020 to present.
- American Law Institute (since September 29, 2010).
- Member, Fellows of the Society for Empirical Legal Studies (since October 2015).
- American Bar Association
- American Economic Association
- American Law and Economics Association

#### **PERSONAL**

- Born: January 30, 1953.



## **EXHIBIT 10**

1 ROB BONTA  
Attorney General of California  
2 MARK R. BECKINGTON  
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E-mail: Robert.Meyerhoff@doj.ca.gov  
7 *Attorneys for Defendant Rob Bonta in his*  
*official capacity as Attorney General of the*  
8 *State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 3:17-cv-01017-BEN-JLB

**SUPPLEMENTAL**  
**DECLARATION OF LOUIS**  
**KLAREVAS**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                   **SUPPLEMENTAL DECLARATION OF LOUIS KLAREVAS**

2           I, Louis Klarevas, declare under penalty of perjury that the following is true  
3 and correct:

4           1.     I previously submitted a Revised Expert Report, which was  
5 incorporated into the record as Exhibit 3 of the Declaration of Deputy Attorney  
6 General John D. Echeverria in Support of Defendants' Opposition to Plaintiffs'  
7 Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, filed  
8 with this Court on April 9, 2018 ("2018 Report" hereinafter).<sup>1</sup> I make this  
9 supplemental declaration in support of Defendants' Supplemental Brief in  
10 Response to the Court's Order of September 26, 2022.

11          2.     This declaration is based on my own personal knowledge and  
12 experience, and if I am called to testify as a witness, I could and would testify  
13 competently to the truth of the matters discussed in this declaration.

14          3.     I have been retained by the California Department of Justice to render  
15 expert opinions in this case. I am being compensated at a rate of \$600 per hour for  
16 testimony (in deposition and in court) and \$480 per hour for all other services.

17                   **BACKGROUND AND QUALIFICATIONS**

18          4.     In addition to my background and qualifications summarized in my  
19 2018 Report, I have subsequently submitted declarations under oath in the  
20 following cases: *Miller v. Bonta*, Case No. 3:19-cv-01537-BEN-JLB, Southern  
21 District of California; *Jones v. Bonta*, Case No. 19-cv-01226-L-AHG, Southern  
22 District of California; and *Nguyen v. Bonta*, Case No. 20-cv-02470-WQH-MDD,  
23 Southern District of California. *Miller* involves a challenge to California's  
24 regulation of assault weapons. *Jones* involves a challenge to California's regulation  
25 of firearm sales to individuals 18 to 20 years old. *Nguyen* involves a challenge to  
26 California's regulation limiting the sale of certain firearms to one purchase per  
27

28                   <sup>1</sup> My 2018 Revised Expert Report can be found at Dkt. 53-4 at 87-132.

1 month. While I was never deposed in *Miller and Jones*, I was deposed in *Nguyen* and testified under oath in court in *Miller*.

5. In 2021, I was also retained by the Government of Canada in the following cases which involved challenges to Canada's regulation of certain categories of firearms: *Parker and K.K.S. Tactical Supplies Ltd. v. Attorney General of Canada*, Federal Court, Court File No.: T-569-20; *Canadian Coalition for Firearm Rights, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-577-20; *Hipwell v. Attorney General of Canada*, Federal Court, Court File No.: T-581-20; *Doherty, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-677-20; *Generoux, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-735-20; and *Eichenberg, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-905-20. I testified under oath in a consolidated court proceeding involving all six cases in the Federal Court of Canada.

6. A true and correct copy of my current curriculum vitae is attached as **Exhibit A** to this declaration.

## OPINIONS

### **I. THE RELATIONSHIP BETWEEN MASS SHOOTINGS, LARGE-CAPACITY MAGAZINE USE, AND LEGAL RESTRICTIONS ON LARGE-CAPACITY MAGAZINES (LCMS)**

7. I have been asked by the California Department of Justice to supplement the opinions expressed in my 2018 Report with currently available information. In my 2018 Report, based on the review of relevant data and the analyses performed in my 2018 Report, I opined:

(1) gun massacres presently pose the deadliest threat to the safety and security of American society, and the problem is growing; (2) gun massacres involving large-capacity magazines, on average, have resulted in a greater loss of life than similar incidents that did not involve large-capacity magazines; and (3) jurisdictions where bans on the possession of large-capacity magazines were in effect experienced fewer gun massacres, per capita, than jurisdictions where such bans were not in effect.<sup>2</sup>

---

<sup>2</sup> 2018 Report, at 4.

1 The primary conclusion of my 2018 Report was that “restrictions on LCMs have  
2 the potential to significantly reduce the number of lives lost in mass shootings.”<sup>3</sup> I  
3 continue to stand by the opinions and conclusions expressed in my 2018 Report.

4 8. Furthermore, in the four-and-a-half-year time period following my  
5 2018 Report being filed with this Court, I have continued to analyze gun massacres  
6 resulting in six or more fatalities (also known as “high-fatality mass shootings” in  
7 the academic literature), including the relationship between LCM use and high-  
8 fatality mass shootings rates.<sup>4</sup> My research indicates that, with regard to gun  
9 massacres, the aforementioned patterns identified in my 2018 Report continue to  
10 hold. Nothing has changed since 2018 to alter my conclusions.

11 9. Based on this recent research, it is still my opinion that, in terms of  
12 gun massacres, restrictions on LCMs have the potential to significantly reduce the  
13 frequency and lethality of mass shooting violence. As I stated in my 2018 Report,  
14 “While imposing constraints on LCMs will not result in the prevention of all future  
15 mass shootings, the data suggest that denying rampage gunmen access to LCMs  
16 will result in a significant number of lives being saved.”<sup>5</sup> I remain steadfast in this  
17 conclusion.

## 18 **II. DOUBLE-DIGIT-FATALITY MASS SHOOTINGS IN AMERICAN HISTORY**

19 10. I have also been asked to examine the historical occurrence and  
20 distribution of mass shootings resulting in 10 or more victims killed since 1776 (see  
21 Table 1 and Fig. 1). A lengthy search uncovered several informative findings.<sup>6</sup> In

22  
23 <sup>3</sup> Ibid.

24 <sup>4</sup> See, Louis Klarevas, et al. *The Effect of Large-Capacity Magazine Bans on*  
25 *High-Fatality Mass Shootings, 1990-2007*, 109 Am. J. of Pub. Health 1754 (2019),  
26 available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305311>  
(last accessed November 6, 2022).

27 <sup>5</sup> 2018 Report, at 17.

28 <sup>6</sup> I searched for firearm-related “murders,” using variations of the term,  
(continued...)

1 terms of the origins of this form of extreme gun violence, there is no known  
2 occurrence of a mass shooting resulting in double-digit fatalities at any point in  
3 time during the 173-year period between the nation's founding in 1776 and 1948.  
4 The first known mass shooting resulting in 10 or more deaths occurs in 1949. In  
5 other words, for 70 percent of its 247-year existence as a nation, the United States  
6 did not experience a mass shooting resulting in double-digit fatalities.<sup>7</sup> After the  
7 first such incident in 1949, 17 years pass until a similar mass shooting occurs in  
8 1966. The third such mass shooting then occurs 9 years later, in 1975. And the  
9 fourth such incident occurs 7 years after, in 1982. Basically, the first few mass  
10 shootings resulting in 10 or more deaths did not occur until the post-World War II  
11 era, and they occurred with relative infrequency, although the temporal gap  
12 between these first four incidents shrank with each event (Table 1 and Fig. 2).<sup>8</sup>

13 11. The distribution of double-digit-fatality mass shootings changes in the  
14 early 1980s, when five such events take place in a span of five years (Table 1 and  
15 Fig. 2). This timeframe also reflects the first time that assault weapons with LCMs  
16 are used to perpetrate mass shootings resulting in 10 or more deaths: the 1982  
17 Wilkes-Barre, PA, massacre (involving an AR-15 rifle and resulting in 13 deaths)  
18 and the 1984 San Ysidro, CA, massacre (involving an Uzi pistol and resulting in 21  
19 deaths). But this cluster of incidents is followed by a 20-year period in which only  
20 2 double-digit-fatality mass shootings occur (Fig. 2). This period of time from

21 setting a minimum fatality threshold of 10 in the Newspaper Archive online  
22 newspaper repository, available at [www.newspaperarchive.com](http://www.newspaperarchive.com) (last accessed  
23 Oct. 2, 2022). The Newspaper Archive contains local and major metropolitan  
24 newspapers dating back to 1607. Incidents of large-scale, inter-group violence such  
25 as mob violence, rioting, combat or battle skirmishes, and attacks initiated by  
authorities acting in their official capacity were excluded.

26 <sup>7</sup> Using the Constitution's effective date of 1789 as the starting point would  
27 lead to the conclusion that, for 68 percent of its 234-year existence as a nation, the  
United States did not experience a mass shooting resulting in double-digit fatalities.

28 <sup>8</sup> Figs. 1-2 are reproduced in larger form as **Exhibit B** of this Declaration.

1 1987-2007 correlates with two important pieces of federal firearms legislation: the  
 2 1986 Firearm Owners Protection Act and the 1994 Federal Assault Weapons Ban.

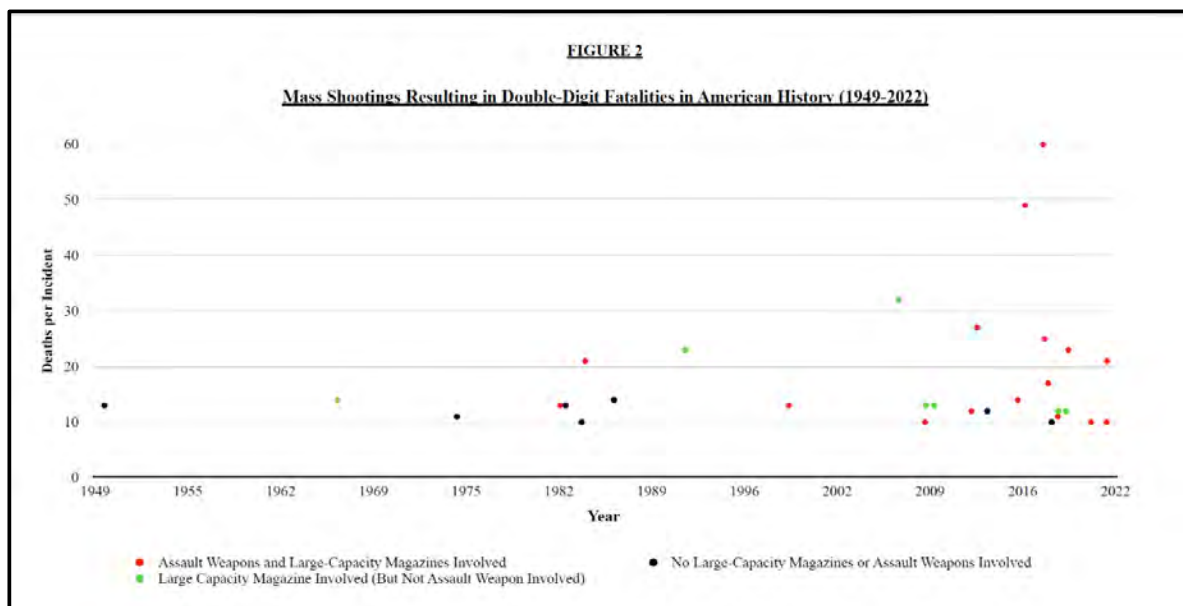
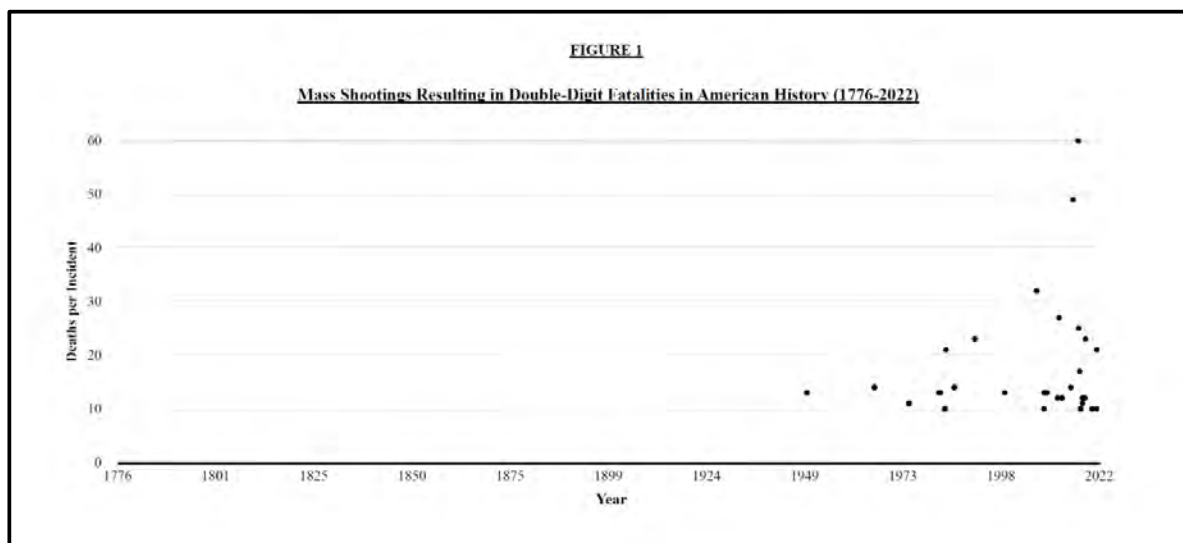
3  
 4 **Table 1**

5 **Mass Shootings Resulting in Double-Digit Fatalities in U.S. History, 1776-2022**

	Date	Location	Deaths	Involved Assault Weapon(s)	Involved Large- Capacity Magazine(s)
1	9/6/1949	Camden, NE	13	N	N
2	8/1/1966	Austin, TX	14	N	Y
3	3/30/1975	Hamilton, OH	11	N	N
4	9/25/1982	Wilkes-Barre, PA	13	Y	Y
5	2/18/1983	Seattle, WA	13	N	N
6	4/15/1984	Brooklyn, NY	10	N	N
7	7/18/1984	San Ysidro, CA	21	Y	Y
8	8/20/1986	Edmond, OK	14	N	N
9	10/16/1991	Killeen, TX	23	N	Y
10	4/20/1999	Littleton, CO	13	Y	Y
11	4/16/2007	Blacksburg, VA	32	N	Y
12	3/10/2009	Geneva County, AL	10	Y	Y
13	4/3/2009	Binghamton, NY	13	N	Y
14	11/5/2009	Fort Hood, TX	13	N	Y
15	7/20/2012	Aurora, CO	12	Y	Y
16	12/14/2012	Newtown, CT	27	Y	Y
17	9/16/2013	Washington, DC	12	N	N
18	12/2/2015	San Bernardino, CA	14	Y	Y
19	6/12/2016	Orlando, FL	49	Y	Y
20	10/1/2017	Las Vegas, NV	60	Y	Y
21	11/5/2017	Sutherland Springs, TX	25	Y	Y
22	2/14/2018	Parkland, FL	17	Y	Y
23	5/18/2018	Santa Fe	10	N	N
24	10/27/2018	Pittsburgh, PA	11	Y	Y
25	11/7/2018	Thousand Oaks, CA	12	N	Y
26	5/31/2019	Virginia Beach, VA	12	N	Y
27	8/3/2019	El Paso, TX	23	Y	Y
28	3/22/2021	Boulder, CO	10	Y	Y
29	5/14/2022	Buffalo, NY	10	Y	Y
30	5/24/2022	Uvalde, TX	21	Y	Y

25 Note: Death tolls do not include perpetrators. An incident was coded as involving an assault  
 26 weapon if at least one of the firearms discharged was defined as an assault weapon in (1) the 1994  
 27 federal Assault Weapons Ban; (2) the statutes of the state where the gun massacre occurred; or (3)  
 28 a legal or judicial declaration issued by a state official. An incident was coded as involving a  
 large-capacity magazine if at least one of the firearms discharged was armed with a detachable  
 ammunition-feeding device holding more than 10 bullets.





12. It is well-documented in the academic literature that, after the Assault Weapons Ban expired in 2004, mass shooting violence increased substantially.<sup>9</sup>

<sup>9</sup> See, for example, Louis Klarevas, *Rampage Nation: Securing America from Mass Shootings* (2016), at 238-245, 348-50 (attached as **Exhibit C**); Louis Klarevas, et al., *supra* note 4 (attached as **Exhibit D**); Charles DiMaggio, et al., *Changes in US Mass Shooting Deaths Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 *Journal of Trauma and Acute Care Surgery* 11 (2019) (attached as **Exhibit E**); Lori Post, et al., *Impact of* (continued...)

1 Mass shootings that resulted in 10 or more deaths were no exception, following the  
 2 same pattern. In the 56 years from 1949 through 2004, there were a total of 10  
 3 mass shootings resulting in double-digit fatalities. In the 18 years since 2004, there  
 4 have been 20 double-digit-fatality mass shootings. In other words, the average rate  
 5 of occurrence has increased over six-fold (Table 1 and Fig. 2).

6 13. The other pattern that stands out from the historical plotting of the data  
 7 is that 100 percent of mass shootings resulting in more than 14 deaths involved  
 8 LCMs holding more than 10 bullets. As with the analyses of gun massacres  
 9 discussed in the previous section, death tolls in double-digit-fatality mass shootings  
 10 are related to the use of LCMs—a firearms technology that, in terms of mass  
 11 shootings, serves as a force multiplier (Table 1 and Fig. 2).

### 12 **III. THE AVAILABILITY OF LCMs IN THE U.S. CIVILIAN FIREARM** 13 **MARKETPLACE**

14 14. I have, furthermore, been asked to perform a decade-by-decade  
 15 analysis of the civilian firearms market in the United States for purposes of  
 16 identifying how many current makes and models of firearms (handguns and long  
 17 guns) were sold with factory-issue magazines having a capacity greater than 10  
 18 rounds of ammunition.<sup>10</sup> The information is drawn from *Gun Digest*, which since  
 19 its 1955 edition has systematically published this data in what is now known as the  
 20 *Gun Digest* GUNDEX.<sup>11</sup> The objective of this evaluation is to identify the

21 \_\_\_\_\_  
 22 *Firearm Surveillance on Gun Control Policy: Regression Discontinuity Analysis*, 7  
 23 *JMIR Public Health and Surveillance* (2021) (attached as **Exhibit F**); and Philip J.  
 24 Cook and John J. Donohue, “Regulating Assault Weapons and Large-Capacity  
 25 Magazines for Ammunition,” 328 *JAMA*, September 27, 2022 (attached as **Exhibit**  
 26 **G**).

27 <sup>10</sup> Air, pellet, and BB guns have been excluded from this analysis in Section  
 28 III of this Declaration.

<sup>11</sup> GUNDEX is a registered trademark of *Gun Digest*. While *Gun Digest* has  
 provided information on guns available for purchase in the United States since the  
 (continued...)

1 percentage of factory-issue firearms sold with LCMs in the American marketplace  
2 that were available from the mid-1950s until the mid-1990s.

3 15. As mentioned above, in 1994, Congress enacted the federal assault  
4 weapons ban, which prohibited the manufacture, transfer, or possession of *new*  
5 LCMs that were not legally in circulation prior to the ban taking effect. As such,  
6 after the ban took effect on September 13, 1994, firearms sold in the civilian  
7 marketplace were not sold with new magazines holding more than 10 rounds of  
8 ammunition. Therefore, additional analysis beyond the mid-1990s is unnecessary,  
9 as the peak of LCM prevalence prior to nationwide restriction of such ammunition-  
10 feeding devices would have presumably been 1994, immediately prior to the ban's  
11 effect. For purposes of this analysis, data is drawn from the 1955, 1965, 1975,  
12 1985, and 1995 editions of the GUNDEX. These editions, respectively, reflect  
13 market availability of firearms in 1954, 1964, 1974, 1984, and 1994.<sup>12</sup>  
14

15 \_\_\_\_\_  
16 publication of its first edition in 1944, it was not until the 1955 edition that *Gun*  
17 *Digest* began presenting this information in a quasi-systematic fashion, including  
18 make, model, and estimated price (at the time of publication). *Gun Digest* first  
19 referenced its catalog as the GUNDEX in its 1984 edition. Prior to that, it was  
20 referred to as the *Gun Digest* "Complete Compact Catalog." Describing to the  
21 Complete Compact Catalog in its 1980 edition, *Gun Digest* wrote: "Its all-inclusive  
22 nature provides, if you look at a lot of them, a history of firearms availability in the  
23 United States. It covers virtually all firearms available to U.S. shooters, whether  
24 manufactured in the United States or elsewhere, or marketed by United States firms  
25 or others, and whether the arm is rimfire, centerfire, muzzleloader, rifle, handgun,  
26 shotgun." *Gun Digest, 34<sup>th</sup> Anniversary, 1980 Deluxe Edition* (1979), at 288  
27 (attached as **Exhibit H**).  
28

24 <sup>12</sup> The 1995 *Gun Digest*, which contains the 1995 GUNDEX, was published  
25 in 1994. Despite being in the 1995 edition, the 1995 GUNDEX predominantly  
26 captures guns available in the marketplace in 1994. The same pattern holds for all  
27 *Gun Digest* GUNDEXs—they reflect the firearms available in the American  
28 marketplace in the year of publication (not the year of the *Gun Digest*'s annual  
edition, which is the year appearing on the cover). Again, every annual *Gun Digest*  
is published in the year prior to the edition listed on the cover.

16. Table 2 shows the number of firearms, current at-the-time, being sold with factory-issue magazines holding more than 10 rounds of ammunition at mid-decade, between 1955 and 1995. According to *Gun Digest*, in 1954, only two firearms were sold in the United States with factory-issue LCMs. By 1994, this number had reached 152 firearms available in the civilian marketplace. As a share of all firearms available in the American marketplace in the decades prior to the federal assault weapons ban taking effect, the range ran from a low of approximately 1-percent in the 1950s and 1960s to a high of approximately 7-percent of all firearms sold with factory-issue large-capacity magazines in the 1990s (immediately prior to the federal ban imposing prohibitions on such LCMs).

**Table 2**  
**Number and Share of Factory-Issue Guns Sold with LCMs in U.S., 1955-1995**

	Number of Factory-Issue Firearms Sold with LCMs	Number of Firearms Available in Civilian Market	Factory-Issue Firearms Sold with LCMs as a Share of All Available Firearms in Marketplace
1955	2	301	1%
1965	3	510	1%
1975	14	834	2%
1985	69	1,270	5%
1995	152	2,108	7%

Sources: *Gun Digest*, 1955; *Gun Digest*, 1965; *Gun Digest*, 1975; *Gun Digest*, 1985; and *Gun Digest*, 1995.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 10, 2022, at Nassau County, New York.



Louis Klarevas

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C	Louis Klarevas, <i>Rampage Nation: Securing America From Mass Shootings</i> 238-245, 348-50 (2016)	22-27
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E	Charles DiMaggio, et al., <i>Changes in US Mass Shooting Deaths Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source Data</i> , 86 Journal of Trauma and Acute Care Surgery 11 (2019)	36-44
F	Lori Post, et al., <i>Impact of Firearm Surveillance on Gun Control Policy: Regression Discontinuity Analysis</i> , 7 JMIR Public Health and Surveillance (2021)	45-54
G	Philip J. Cook and John J. Donohue, “ <i>Regulating Assault Weapons and Large-Capacity Magazines for Ammunition</i> ,” 328 JAMA, September 27, 2022	55-56
H	<i>Gun Digest, 34th Anniversary, 1980 Deluxe Edition</i> 288 (1979)	57-58

## **EXHIBIT A**

**Louis J. Klarevas**  
Email: [ljkl2149@tc.columbia.edu](mailto:ljkl2149@tc.columbia.edu)

### **Education**

Ph.D. International Relations, 1999  
School of International Service  
American University  
Washington, DC

B.A. Political Science, *Cum Laude*, 1989  
School of Arts and Sciences  
University of Pennsylvania  
Philadelphia, PA

### **Author**

*Rampage Nation: Securing America from Mass Shootings*

### **Current Positions**

Research Professor, Teachers College, Columbia University, New York, NY, 2018-Present

Faculty Affiliate, Media and Social Change Lab (MASCLab), Teachers College, Columbia University, New York, NY, 2019-Present

### **Professional Experience**

#### *Academic Experience (Presented in Academic Years)*

Associate Lecturer, Department of Global Affairs, University of Massachusetts – Boston, Boston, MA, 2015-2020

Senior Fulbright Scholar (Security Studies), Department of European and International Studies, University of Macedonia, Thessaloniki, Greece, 2011-2012

Founder and Coordinator, Graduate Transnational Security Program, Center for Global Affairs, New York University, New York, NY, 2009-2011

Faculty Affiliate, A. S. Onassis Program in Hellenic Studies, New York University, New York, NY, 2007-2011

Clinical Faculty, Center for Global Affairs, New York University, New York, NY, 2006-2011



Adjunct Professor, Center for Global Affairs, New York University, New York, NY, 2004-2006

Assistant Professor of Political Science, City University of New York – College of Staten Island, Staten Island, NY, 2003-2006

Associate Fellow, European Institute, London School of Economics and Political Science, London, England, UK, 2003-2004

Defense Analysis Research Fellow, London School of Economics and Political Science, London, England, UK, 2002-2004

Visiting Assistant Professor of Political Science and International Affairs, George Washington University, Washington, DC, 1999-2002

Adjunct Professor of Political Science, George Washington University, Washington, DC, 1998-1999

Adjunct Professor of International Relations, School of International Service, American University, Washington, DC, 1994-1995

Dean's Scholar, School of International Service, American University, Washington, DC, 1989-1992

Professional Experience (Presented in Calendar Years)

Expert for Cook County, Illinois, *Viramontes v. County of Cook*, United States District Court for Northern District of Illinois, Case Number 21-cv-04595, Chicago, IL, 2022-

Expert for Government of Canada, *Parker and K.K.S. Tactical Supplies Ltd. v. Attorney General of Canada*, Federal Court, Court File No.: T-569-20, 2021-

Expert for Government of Canada, *Canadian Coalition for Firearm Rights, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-577-20, 2021-

Expert for Government of Canada, *Hipwell v. Attorney General of Canada*, Federal Court, Court File No.: T-581-20, 2021-

Expert for Government of Canada, *Doherty, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-677-20, 2021-

Expert for Government of Canada, *Generoux, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-735-20, 2021-

Expert for Government of Canada, *Eichenberg, et al. v. Attorney General of Canada*, Federal Court, Court File No.: T-905-20, 2021-

Expert for State of California, *Nguyen v. Bonta*, United States District Court for Southern District of California, Case Number 20-cv-02470-WQH-MDD, San Diego, CA, 2021-

Expert for State of California, *Jones v. Bonta*, United States District Court for Southern District of California, Case Number 19-cv-01226-L-AHG, San Diego, CA, 2021-

Expert for State of California, *Miller v. Becerra*, United States District Court for Southern District of California, Case Number 19-cv-1537-BEN-JLB, San Diego, CA, 2019-

Expert for Plaintiffs, *Ward et al. v. Academy Sports + Outdoor*, District Court Bexar County, Texas, 224<sup>th</sup> Judicial District, Cause Number 2017CI23341, Bexar County, TX, 2019-

Expert for State of California, *Duncan v. Becerra*, United States District Court for Southern District of California, Case Number 17-cv-1017-BEN-JLB, San Diego, CA, 2017-

Expert for State of California, *Wiese v. Becerra*, United States District Court for Eastern District of California, Case Number 17-cv-00903-WBS-KJN, Sacramento, CA, 2017-

Expert for State of Colorado, *Rocky Mountain Gun Owners v. Hickenlooper*, District Court for County and City of Denver, Colorado, Case Number 2013CV33879, Denver, CO, 2016-2017

Consultant, National Joint Terrorism Task Force, Federal Bureau of Investigation, Washington, DC, 2015

Writer, Prometheus Books, Amherst, NY, 2012-2015

Consultant, United States Institute of Peace, Washington, DC, 2005, 2008-2009

Research Associate, United States Institute of Peace, Washington, DC, 1992-1998

Faculty Advisor, National Youth Leadership Forum, Washington, DC, 1992

## **Courses Taught**

### Graduate

Counter-Terrorism and Homeland Security  
International Political Economy  
International Politics in a Post-Cold War Era  
International Security  
Machinery and Politics of American Foreign Policy  
Role of the United States in World Affairs  
Security Policy  
Theories of International Politics  
Transnational Security  
Transnational Terrorism  
United States Foreign Policy

### Undergraduate

American Government and Politics  
European-Atlantic Relations  
International Political Economy  
International Relations  
Transnational Terrorism  
United States Foreign Policy

## Scholarship

“State Firearm Laws, Gun Ownership, and K-12 School Shootings: Implications for School Safety,” *Journal of School Violence*, 2022 (co-authored with Paul M. Reeping, Sonali Rajan, et al.)

“The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990-2017,” *American Journal of Public Health*, November 2019 (co-authored with Andrew Conner and David Hemenway)

“Changes in U.S. Mass Shooting Deaths Associated with the 1994-2004 Federal Assault Weapons Ban,” *Journal of Trauma and Acute Care Surgery*, May 2019 (correspondence)

*Firearms on College Campuses: Research Evidence and Policy Implications*, report prepared by the Johns Hopkins University Center for Gun Policy and Research for the Association of American Universities, October 2016 (co-authored with Daniel W. Webster, John J. Donohue, et al.)

*Rampage Nation: Securing America from Mass Shootings*, Prometheus Books, 2016

“No Relief in Sight: Barring *Bivens* Suits in Torture Cases,” *Presidential Studies Quarterly*, June 2013

Review of James Edward Miller’s *The United States and the Making of Modern Greece: History and Power, 1950-1974*, *Presidential Studies Quarterly*, June 2012 (book review)

“Trends in Terrorism Since 9/11,” *Georgetown Journal of International Affairs*, Winter/Spring 2011

“The Death Penalty Should Be Decided Only Under a Specific Guideline,” in Christine Watkins, ed., *The Ethics of Capital Punishment* (Cengage/Gale Publishers, 2011)

*Saving Lives in the ‘Convoy of Joy’: Lessons for Peace-Keeping from UNPROFOR*, United States Institute of Peace Case Study, 2009

“Casualties, Polls and the Iraq War,” *International Security*, Fall 2006 (correspondence)

“The CIA Leak Case Indicting Vice President Cheney’s Chief of Staff,” *Presidential Studies Quarterly*, June 2006

“Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup,” *Diplomatic History*, June 2006

“Greeks Bearing Consensus: An Outline for Increasing Greece’s Soft Power in the West,” *Mediterranean Quarterly*, Summer 2005

“W Version 2.0: Foreign Policy in the Second Bush Term,” *The Fletcher Forum of World Affairs*, Summer 2005

“Can You Sue the White House? Opening the Door for Separation of Powers Immunity in *Cheney v. District Court*,” *Presidential Studies Quarterly*, December 2004

“Political Realism: A Culprit for the 9/11 Attacks,” *Harvard International Review*, Fall 2004

*Greeks Bearing Consensus: An Outline for Increasing Greece’s Soft Power in the West*, Hellenic Observatory Discussion Paper 18, London School of Economics, November 2004

*Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup*, Hellenic Observatory Discussion Paper 15, London School of Economics, February 2004

“Not a Divorce,” *Survival*, Winter 2003-2004 (correspondence)

“Media Impact,” in Mark Rozell, ed., *The Media and American Politics: An Introduction* (Lanham, MD: Rowman & Littlefield, 2003)

“The Surrender of Alleged War Criminals to International Tribunals: Examining the Constitutionality of Extradition via Congressional-Executive Agreement,” *UCLA Journal of International Law and Foreign Affairs*, Fall/Winter 2003

“The Constitutionality of Congressional-Executive Agreements: Insights from Two Recent Cases,” *Presidential Studies Quarterly*, June 2003

“The ‘Essential Domino’ of Military Operations: American Public Opinion and the Use of Force,” *International Studies Perspectives*, November 2002

“The Polls—Trends: The United States Peace Operation in Somalia,” *Public Opinion Quarterly*, Winter 2001

*American Public Opinion on Peace Operations: The Cases of Somalia, Rwanda, and Haiti*, University of Michigan Dissertation Services, 1999

“Turkey’s Right v. Might Dilemma in Cyprus: Reviewing the Implications of *Loizidou v. Turkey*,” *Mediterranean Quarterly*, Spring 1999

“An Outline of a Plan Toward a Comprehensive Settlement of the Greek-Turkish Dispute,” in Vangelis Calotychos, ed., *Cyprus and Its People: Nation, Identity, and Experience in an Unimaginable Community, 1955-1997*, Boulder, CO: Westview Press, 1998 (co-authored with Theodore A. Couloumbis)

“Prospects for Greek-Turkish Reconciliation in a Changing International Setting,” in Tozun Bahcheli, Theodore A. Couloumbis, and Patricia Carley, eds., *Greek-Turkish Relations and U.S. Foreign Policy: Cyprus, the Aegean, and Regional Stability*, Washington, D.C.: U.S. Institute of Peace, 1997 (co-authored with Theodore A. Couloumbis) [Reproduced as “Prospects for Greek-

Turkish Reconciliation in a Changing International Setting,” in Robert L. Pfaltzgraff and Dimitris Keridis, eds., *Security in Southeastern Europe and the U.S.-Greek-Relationship*, London: Brassey’s, 1997 (co-authored with Theodore A. Couloumbis)]

“Structuration Theory in International Relations,” *Swords & Ploughshares*, Spring 1992

### **Commentaries and Correspondence**

“Why Our Response to School Shootings Is All Wrong,” *Los Angeles Times*, May 25, 2022 (co-authored with Sonali Rajan and Charles Branas)

“COVID-19 Is a Threat to National Security. Let’s Start Treating It as Such,” *Just Security*, August 6, 2020 (co-authored with Colin P. Clarke)

“If the Assault Weapons Ban ‘Didn’t Work,’ Then Why Does the Evidence Suggest It Saved Lives?” *Los Angeles Times*, March 11, 2018 (correspondence)

“London and the Mainstreaming of Vehicular Terrorism,” *The Atlantic*, June 4, 2017 (co-authored with Colin P. Clarke)

“Firearms Have Killed 82 of the 86 Victims of Post-9/11 Domestic Terrorism,” *The Trace*, June 30, 2015 [Reproduced as “Almost Every Fatal Terrorist Attack in America since 9/1 Has Involved Guns.” *Vice*, December 4, 2015]

“International Law and the 2012 Presidential Elections,” Vitoria Institute, March 24, 2012

“Al Qaeda Without Bin Laden,” CBS News *Opinion*, May 2, 2011

“Fuel, But Not the Spark,” *Zocalo Public Square*, February 16, 2011

“After Tucson, Emotions Run High,” *New York Times*, January 12, 2011 (correspondence)

“WikiLeaks, the Web, and the Need to Rethink the Espionage Act,” *The Atlantic*, November 9, 2010

“Deprogramming Jihadis,” *New York Times Magazine*, November 23, 2008 (correspondence)

“Food: An Issue of National Security,” *Forbes* (Forbes.com), October 25, 2008

“An Invaluable Opportunity for Greece To Increase Its Standing and Influence on the World Stage,” *Kathimerini* (Greece), January 13, 2005

“How Many War Deaths Can We Take?” *Newsday*, November 7, 2003

“Down But Not Out,” London School of Economics Iraq War Website, April 2003

“Four Half-Truths and a War,” *American Reporter*, April 6, 2003

“The Greek Bridge between Old and New Europe,” *National Herald*, February 15-16, 2003

“Debunking a Widely-Believed Greek Conspiracy Theory,” *National Herald*, September 21-22, 2002

“Debunking of Elaborate Media Conspiracies an Important Trend,” *Kathimerini* (Greece), September 21, 2002 [Not Related to September 21-22, 2002, *National Herald* Piece with Similar Title]

“Cold Turkey,” *Washington Times*, March 16, 1998

“If This Alliance Is to Survive . . .,” *Washington Post*, January 2, 1998 [Reproduced as “Make Greece and Turkey Behave,” *International Herald Tribune*, January 3, 1998]

“Defuse Standoff on Cyprus,” *Defense News*, January 27-February 2, 1997

“Ukraine Holds Nuclear Edge,” *Defense News*, August 2-8, 1993

**Commentaries Written for New York Daily News –**

**<https://www.nydailynews.com/authors/?author=Louis+Klarevas>**

“Careful How You Talk about Suicide, Mr. President,” March 25, 2020 (co-authored with Sonali Rajan, Charles Branas, and Katherine Keyes)

“Only as Strong as Our Weakest Gun Laws: The Latest Mass Shooting Makes a Powerful Case for Federal Action,” November 8, 2018

“What to Worry, and not Worry, About: The Thwarted Pipe-Bomb Attacks Point to Homeland Security Successes and Vulnerabilities,” October 25, 2018

“After the Santa Fe Massacre, Bury the ‘Good Guy with a Gun’ Myth: Armed Staffers Won’t Deter Shooters or Keep Kids Safe,” May 22, 2018

“It’s the Guns (and Ammo), Stupid: Dissuading Killers and Hardening Targets Matter Too, But Access to Weapons Matters Most,” February 18, 2018

“The Texas Shooting Again Reveals Inadequate Mental-Health Help in the U.S. Military,” November 7, 2017

“Why Mass Shootings Are Getting Worse: After Vegas, We Urgently Must Fix Our Laws,” October 2, 2017

“N.Y. Can Lead the Nation in Fighting Child Sex Trafficking,” April 21, 2009 (co-authored with Ana Burdsall-Morse)

“Crack Down on Handguns – They’re a Tool of Terror, Too,” October 25, 2007

**Commentaries Written for *The Huffington Post* – [www.huffingtonpost.com/louis-klarevas](http://www.huffingtonpost.com/louis-klarevas)**

“Improving the Justice System Following the Deaths of Michael Brown and Eric Garner,” December 4, 2014

“American Greengemony: How the U.S. Can Help Ukraine and the E.U. Break Free from Russia’s Energy Stranglehold,” March 6, 2014

“Guns Don’t Kill People, Dogs Kill People,” October 17, 2013

“Romney the Liberal Internationalist?” October 23, 2012

“Romney’s Unrealistic Foreign Policy Vision: National Security Funded by Money Growing Trees,” October 10, 2012

“Do the Wrong Thing: Why Penn State Failed as an Institution,” November 14, 2011

“Holding Egypt’s Military to Its Pledge of Democratic Reform,” February 11, 2011

“The Coming Twolutions? Social Media in the Recent Uprisings in Tunisia and Egypt,” January 31, 2011

“Scholarship Slavery: Does St. John’s ‘Dean of Mean’ Represent a New Face of Human Trafficking?” October 6, 2010

“Misunderstanding Terrorism, Misrepresenting Islam,” September 21, 2010

“Bombing on the Analysis of the Times Square Bomb Plot,” May 5, 2010

“Do the Hutaree Militia Members Pose a Terrorist Threat?” May 4, 2010

“Addressing Mexico’s Gun Violence One Extradition at a Time,” March 29, 2010

“Terrorism in Texas: Why the Austin Plane Crash Is an Act of Terror,” February 19, 2010

“Securing American Primacy by Tackling Climate Change: Toward a National Strategy of Greengemony,” December 15, 2009

“Traffickers Without Borders: A ‘Journey’ into the Life of a Child Victimized by Sex Trafficking,” November 17, 2009



“Beyond a Lingering Doubt: It’s Time for a New Standard on Capital Punishment,” November 9, 2009

“It’s the Guns Stupid: Why Handguns Remain One of the Biggest Threats to Homeland Security,” November 7, 2009

“Obama Wins the 2009 Nobel Promise Prize,” October 9, 2009

**Commentaries for *Foreign Policy* – [www.foreignpolicy.com](http://www.foreignpolicy.com)**

“The White House’s Benghazi Problem,” September 20, 2012

“Greeks Don’t Want a Grexit,” June 14, 2012

“The Earthquake in Greece,” May 7, 2012

“The Idiot Jihadist Next Door,” December 1, 2011

“Locked Up Abroad,” October 4, 2011

**Commentaries for *The New Republic* – [www.tnr.com/users/louis-klarevas](http://www.tnr.com/users/louis-klarevas)**

“What the U.N. Can Do To Stop Getting Attacked by Terrorists,” September 2, 2011

“Is It Completely Nuts That the British Police Don’t Carry Guns? Maybe Not,” August 13, 2011

“How Obama Could Have Stayed the Execution of Humberto Leal Garcia,” July 13, 2011

“After Osama bin Laden: Will His Death Hasten Al Qaeda’s Demise?” May 2, 2011

“Libya’s Stranger Soldiers: How To Go After Qaddafi’s Mercenaries,” February 28, 2011

“Closing the Gap: How To Reform U.S. Gun Laws To Prevent Another Tucson,” January 13, 2011

“Easy Target,” June 13, 2010

“Death Be Not Proud,” October 27, 2003 (correspondence)

**Legal Analyses Written for *Writ* – [writ.news.findlaw.com/contributors.html#klarevas](https://writ.news.findlaw.com/contributors.html#klarevas)**

“Human Trafficking and the Child Protection Compact Act of 2009,” *Writ* (FindLaw.com), July 15, 2009 (co-authored with Christine Buckley)

“Can the Justice Department Prosecute Reporters Who Publish Leaked Classified Information? Interpreting the Espionage Act,” *Writ* (FindLaw.com), June 9, 2006

“Will the Precedent Set by the Indictment in a Pentagon Leak Case Spell Trouble for Those Who Leaked Valerie Plame's Identity to the Press?” *Writ* (FindLaw.com), August 15, 2005

“Jailing Judith Miller: Why the Media Shouldn’t Be So Quick to Defend Her, and Why a Number of These Defenses Are Troubling,” *Writ* (FindLaw.com), July 8, 2005

“The Supreme Court Dismisses the Controversial Consular Rights Case: A Blessing in Disguise for International Law Advocates?” *Writ* (FindLaw.com), June 6, 2005 (co-authored with Howard S. Schiffman)

“The Decision Dismissing the Lawsuit against Vice President Dick Cheney,” *Writ* (FindLaw.com), May 17, 2005

“The Supreme Court Considers the Rights of Foreign Citizens Arrested in the United States,” *Writ* (FindLaw.com), March 21, 2005 (co-authored with Howard S. Schiffman)

**Presentations and Addresses**

**In addition to the presentations listed below, I have made close to one hundred media appearances, book events, and educational presentations (beyond lectures for my own classes)**

“Mass Shootings: What We Know, What We Don’t Know, and Why It All Matters,” keynote presentation to be delivered at the Columbia University Center for Injury Science and Prevention Annual Symposium, virtual meeting, May 2020

“K-12 School Environmental Responses to Gun Violence: Gaps in the Evidence,” paper presented at Society for Advancement of Violence and Injury Research Annual Meeting, virtual meeting, April 2020 (co-authored with Sonali Rajan, Joseph Erardi, Justin Heinze, and Charles Branas)

“Active School Shootings,” Post-Performance Talkback following Presentation of *17 Minutes*, Barrow Theater, New York, January 29, 2020 (co-delivered with Sonali Rajan)

“Addressing Mass Shootings in Public Health: Lessons from Security Studies,” Teachers College, Columbia University, November 25, 2019

“Rampage Nation: Securing America from Mass Shootings,” Swarthmore College, October 24, 2019

“Rampage Nation: Securing America from Mass Shootings,” University of Pennsylvania, February 9, 2018

“Treating Mass Shootings for What They Really Are: Threats to American Security,” Framingham State University, October 26, 2017

“Book Talk: Rampage Nation,” Teachers College, Columbia University, October 17, 2017

Participant, Roundtable on Assault Weapons and Large-Capacity Magazines, Annual Conference on Second Amendment Litigation and Jurisprudence, Law Center to Prevent Gun Violence, October 16, 2017

“Protecting the Homeland: Tracking Patterns and Trends in Domestic Terrorism,” address delivered to the annual meeting of the National Joint Terrorism Task Force, June 2015

“Sovereign Accountability: Creating a Better World by Going after Bad Political Leaders,” address delivered to the Daniel H. Inouye Asia-Pacific Center for Security Studies, November 2013

“Game Theory and Political Theater,” address delivered at the School of Drama, State Theater of Northern Greece, May 2012

“Holding Heads of State Accountable for Gross Human Rights Abuses and Acts of Aggression,” presentation delivered at the Michael and Kitty Dukakis Center for Public and Humanitarian Service, American College of Thessaloniki, May 2012

Chairperson, Cultural Enrichment Seminar, Fulbright Foundation – Southern Europe, April 2012

Participant, Roundtable on “Did the Intertubes Topple Hosni?” Zócalo Public Square, February 2011

Chairperson, Panel on Democracy and Terrorism, annual meeting of the International Security Studies Section of the International Studies Association, October 2010

“Trends in Terrorism Within the American Homeland Since 9/11,” paper to be presented at the annual meeting of the International Security Studies Section of the International Studies Association, October 2010

Panelist, “In and Of the World,” Panel on Global Affairs in the 21<sup>st</sup> Century, Center for Global Affairs, New York University, March 2010

Moderator, “Primacy, Perils, and Players: What Does the Future Hold for American Security?” Panel of Faculty Symposium on Global Challenges Facing the Obama Administration, Center for Global Affairs, New York University, March 2009

“Europe’s Broken Border: The Problem of Illegal Immigration, Smuggling and Trafficking via Greece and the Implications for Western Security,” presentation delivered at the Center for Global Affairs, New York University, February 2009

“The Dangers of Democratization: Implications for Southeast Europe,” address delivered at the University of Athens, Athens, Greece, May 2008

Participant, “U.S. National Intelligence: The Iran National Intelligence Estimate,” Council on Foreign Relations, New York, April 2008

Moderator, First Friday Lunch Series, “Intelligence in the Post-9/11 World: An Off-the-Record Conversation with Dr. Joseph Helman (U.S. Senior National Intelligence Service),” Center for Global Affairs, New York University, March 2008

Participant, “U.S. National Intelligence: Progress and Challenges,” Council on Foreign Relations, New York, March 2008

Moderator, First Friday Lunch Series, “Public Diplomacy: The Steel Backbone of America’s Soft Power: An Off-the-Record Conversation with Dr. Judith Baroody (U.S. Department of State),” Center for Global Affairs, New York University, October 2007

“The Problems and Challenges of Democratization: Implications for Latin America,” presentation delivered at the Argentinean Center for the Study of Strategic and International Relations Third Conference on the International Relations of South America (IBERAM III), Buenos Aires, Argentina, September 2007

“The Importance of Higher Education to the Hellenic-American Community,” keynote address to the annual Pan-Icarian Youth Convention, New York, May 2007

Moderator, First Friday Lunch Series, Panel Spotighting Graduate Theses and Capstone Projects, Center for Global Affairs, New York University, April 2007

Convener, U.S. Department of State Foreign Officials Delegation Working Group on the Kurds and Turkey, March 2007

“Soft Power and International Law in a Globalizing Latin America,” round-table presentation delivered at the Argentinean Center for the Study of Strategic and International Relations Twelfth Conference of Students and Graduates of International Relations in the Southern Cone (CONOSUR XII), Buenos Aires, Argentina, November 2006

Moderator, First Friday Lunch Series, “From Berkeley to Baghdad to the Beltway: An Off-the-Record Conversation with Dr. Catherine Dale (U.S. Department of Defense),” Center for Global Affairs, New York University, November 2006

Chairperson, Roundtable on Presidential Privilege and Power Reconsidered in a Post-9/11 Era, American Political Science Association Annual Meeting, September 2006

“Constitutional Controversies,” round-table presentation delivered at City University of New York-College of Staten Island, September 2005

“The Future of the Cyprus Conflict,” address to be delivered at City University of New York College of Staten Island, April 2005

“The 2004 Election and the Future of American Foreign Policy,” address delivered at City University of New York College of Staten Island, December 2004

“One Culprit for the 9/11 Attacks: Political Realism,” address delivered at City University of New York-College of Staten Island, September 2004

“Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup,” address delivered at London School of Economics, November 2003

“Beware of Europeans Bearing Gifts? Cypriot Accession to the EU and the Prospects for Peace,” address delivered at Conference on Mediterranean Stability, Security, and Cooperation, Austrian Defense Ministry, Vienna, Austria, October 2003

Co-Chair, Panel on Ideational and Strategic Aspects of Greek International Relations, London School of Economics Symposium on Modern Greece, London, June 2003

“Greece between Old and New Europe,” address delivered at London School of Economics, June 2003

Co-Chair, Panel on International Regimes and Genocide, International Association of Genocide Scholars Annual Meeting, Galway, Ireland, June 2003

“American Cooperation with International Tribunals,” paper presented at the International Association of Genocide Scholars Annual Meeting, Galway, Ireland, June 2003

“Is the Unipolar Moment Fading?” address delivered at London School of Economics, May 2003

“Cyprus, Turkey, and the European Union,” address delivered at London School of Economics, February 2003

“Bridging the Greek-Turkish Divide,” address delivered at Northwestern University, May 1998

“The CNN Effect: Fact or Fiction?” address delivered at Catholic University, April 1998

“The Current Political Situation in Cyprus,” address delivered at AMIDEAST, July 1997

“Making the Peace Happen in Cyprus,” presentation delivered at the U.S. Institute of Peace in July 1997

“The CNN Effect: The Impact of the Media during Diplomatic Crises and Complex Emergencies,” a series of presentations delivered in Cyprus (including at Ledra Palace), May 1997

“Are Policy-Makers Misreading the Public? American Public Opinion on the United Nations,” paper presented at the International Studies Association Annual Meeting, Toronto, Canada, March 1997 (with Shoon Murray)

“The Political and Diplomatic Consequences of Greece’s Recent National Elections,” presentation delivered at the National Foreign Affairs Training Center, Arlington, VA, September 1996

“Prospects for Greek-Turkish Reconciliation,” presentation delivered at the U.S. Institute of Peace Conference on Greek-Turkish Relations, Washington, D.C., June, 1996 (with Theodore A. Couloubis)

“Greek-Turkish Reconciliation,” paper presented at the Karamanlis Foundation and Fletcher School of Diplomacy Joint Conference on The Greek-U.S. Relationship and the Future of Southeastern Europe, Washington, D.C., May, 1996 (with Theodore A. Couloubis)

“The Path toward Peace in the Eastern Mediterranean and the Balkans in the Post-Cold War Era,” paper presented at the International Studies Association Annual Meeting, San Diego, CA, March, 1996 (with Theodore A. Couloubis)

“Peace Operations: The View from the Public,” paper presented at the International Studies Association Annual Meeting, San Diego, CA, March, 1996

Chairperson, Roundtable on Peace Operations, International Security Section of the International Studies Association Annual Meeting, Rosslyn, VA, October, 1995

“Chaos and Complexity in International Politics: Epistemological Implications,” paper presented at the International Studies Association Annual Meeting, Washington, D.C., March, 1994

“At What Cost? American Mass Public Opinion and the Use of Force Abroad,” paper presented at the International Studies Association Annual Meeting, Washington, D.C., March, 1994 (with Daniel B. O'Connor)

“American Mass Public Opinion and the Use of Force Abroad,” presentation delivered at the United States Institute of Peace, Washington, D.C., February, 1994 (with Daniel B. O'Connor)

“For a Good Cause: American Mass Public Opinion and the Use of Force Abroad,” paper presented at the Annual Meeting of the Foreign Policy Analysis/Midwest Section of the International Studies Association, Chicago, IL, October, 1993 (with Daniel B. O'Connor)

“American International Narcotics Control Policy: A Critical Evaluation,” presentation delivered at the American University Drug Policy Forum, Washington, D.C., November, 1991

“American National Security in the Post-Cold War Era: Social Defense, the War on Drugs, and the Department of Justice,” paper presented at the Association of Professional Schools of International Affairs Conference, Denver, CO, February, 1991

**Referee for Grant Organizations, Peer-Reviewed Journals, and Book Publishers**

National Science Foundation, Division of Social and Economic Sciences

*American Journal of Public Health*

*American Political Science Review*

*British Medical Journal (BMJ)*

*Comparative Political Studies*

*Injury Epidemiology*

*Journal of Public and International Affairs*

*Millennium*

*Political Behavior*

*Presidential Studies Quarterly*

*Victims & Offenders*

*Violence and Victims*

Brill Publishers

Johns Hopkins University Press

Routledge



**Service to University, Profession, and Community**

Member, Regional Gun Violence Research Consortium, Nelson A. Rockefeller Institute of Government, State University of New York, 2022-

Founding Member, Scientific Union for the Reduction of Gun Violence (SURGE), Columbia University, 2019-

Contributing Lecturer, Johns Hopkins University, Massive Open Online Course on Evidence-Based Gun Violence Research, Funded by David and Lucile Packard Foundation, 2019

Member, Group of Gun Violence Experts, *New York Times* Upshot Survey, 2017

Member, Guns on Campus Assessment Group, Johns Hopkins University and Association of American Universities, 2016

Member, Fulbright Selection Committee, Fulbright Foundation, Athens, Greece, 2012

Faculty Advisor, Global Affairs Graduate Society, New York University, 2009-2011

Founder and Coordinator, Graduate Transnational Security Studies, Center for Global Affairs, New York University, 2009-2011

Organizer, Annual Faculty Symposium, Center for Global Affairs, New York University, 2009

Member, Faculty Search Committees, Center for Global Affairs, New York University, 2007-2009

Member, Graduate Program Director Search Committee, Center for Global Affairs, New York University, 2008-2009

Developer, Transnational Security Studies, Center for Global Affairs, New York University, 2007-2009

Participant, Council on Foreign Relations Special Series on National Intelligence, New York, 2008

Member, Graduate Certificate Curriculum Committee, Center for Global Affairs, New York University, 2008

Member, Faculty Affairs Committee, New York University, 2006-2008

Member, Curriculum Review Committee, Center for Global Affairs, New York University, 2006-2008

Member, Overseas Study Committee, Center for Global Affairs, New York University, 2006-2007

Participant, New York Academic Delegation to Israel, Sponsored by American-Israel Friendship League, 2006

Member, Science, Letters, and Society Curriculum Committee, City University of New York-College of Staten Island, 2006

Member, Graduate Studies Committee, City University of New York-College of Staten Island, 2005-2006

Member, Summer Research Grant Selection Committee, City University of New York-College of Staten Island, 2005

Director, College of Staten Island Association, 2004-2005

Member of Investment Committee, College of Staten Island Association, 2004-2005

Member of Insurance Committee, College of Staten Island Association, 2004-2005

Member, International Studies Advisory Committee, City University of New York-College of Staten Island, 2004-2006

Faculty Advisor, Pi Sigma Alpha National Political Science Honor Society, City University of New York-College of Staten Island, 2004-2006

Participant, World on Wednesday Seminar Series, City University of New York-College of Staten Island, 2004-2005

Participant, American Democracy Project, City University of New York-College of Staten Island, 2004

Participant, Philosophy Forum, City University of New York-College of Staten Island, 2004

Commencement Liaison, City University of New York-College of Staten Island, 2004

Member of Scholarship Committee, Foundation of Pan-Icarian Brotherhood, 2003-2005, 2009

Scholarship Chairman, Foundation of Pan-Icarian Brotherhood, 2001-2003

Faculty Advisor to the Kosmos Hellenic Society, George Washington University, 2001-2002

Member of University of Pennsylvania's Alumni Application Screening Committee, 2000-2002

Participant in U.S. Department of State's International Speakers Program, 1997

Participant in Yale University's United Nations Project, 1996-1997

Member of Editorial Advisory Board, *Journal of Public and International Affairs*, Woodrow Wilson School of Public and International Affairs, Princeton University, 1991-1993

Voting Graduate Student Member, School of International Service Rank and Tenure Committee, American University, 1990-1992

Member of School of International Service Graduate Student Council, American University, 1990-1992

Teaching Assistant for the Several Courses (World Politics, Beyond Sovereignty, Between Peace and War, Soviet-American Security Relations, and Organizational Theory) at School of International Service Graduate Student Council, American University, 1989-1992

Representative for American University at the Annual Meeting of the Association of Professional Schools of International Affairs, Denver, Colorado, 1991

**Affiliations, Associations, and Organizations (Past and Present)**

Academy of Political Science (APS)

American Political Science Association (APSA)

Anderson Society of American University

Carnegie Council Global Ethics Network

Columbia University Scientific Union for the Reduction of Gun Violence (SURGE)

Firearm Safety among Children and Teens (FACTS)

International Political Science Association (IPSA)

International Studies Association (ISA)

New York Screenwriters Collective

Pan-Icarian Brotherhood

Pi Sigma Alpha

Regional Gun Violence Research Consortium

Society for Advancement of Violence and Injury Research (SAVIR)

United States Department of State Alumni Network

United States Institute of Peace Alumni Association

University of Pennsylvania Alumni Association

### **Grants, Honors, and Awards**

Co-Investigator, A Nationwide Case-Control Study of Firearm Violence Prevention Tactics and Policies in K-12 School, National Institutes of Health, 2021-2024 (Charles Branas and Sonali Rajan MPIs)

Senior Fulbright Fellowship, 2012

Professional Staff Congress Research Grantee, City University of New York, 2004-2005

Research Assistance Award (Two Times), City University of New York-College of Staten Island, 2004

Summer Research Fellowship, City University of New York-College of Staten Island, 2004

European Institute Associate Fellowship, London School of Economics, 2003-2004

Hellenic Observatory Defense Analysis Research Fellowship, London School of Economics, 2002-2003

United States Institute of Peace Certificate of Meritorious Service, 1996

National Science Foundation Dissertation Research Grant, 1995 (declined)

Alexander George Award for Best Graduate Student Paper, Runner-Up, Foreign Policy Analysis Section, International Studies Association, 1994

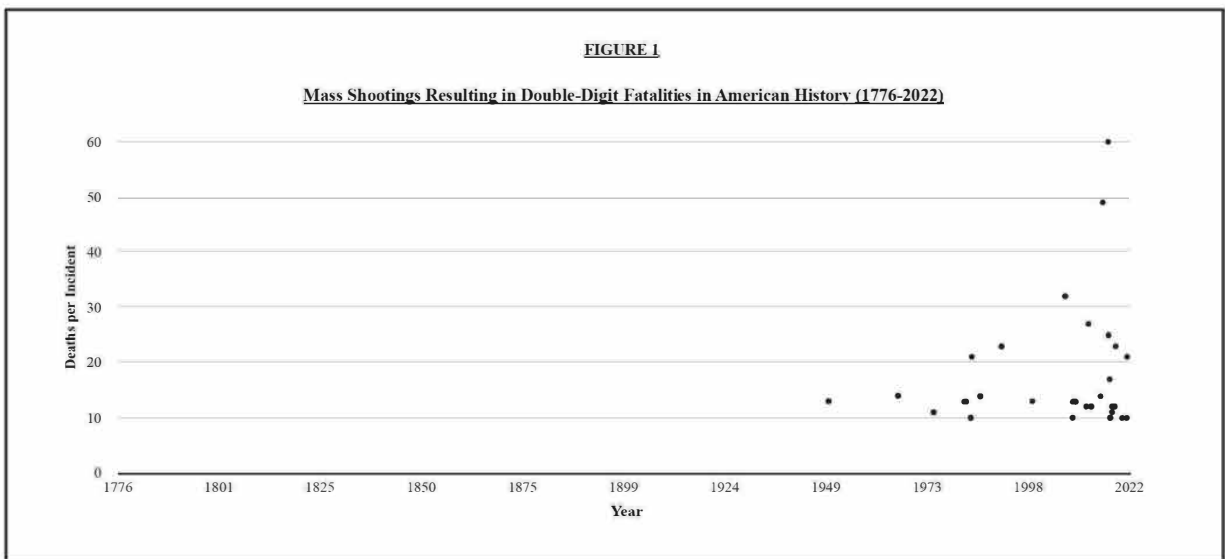
Dean's Scholar Fellowship, School of International Service, American University, 1989-1992

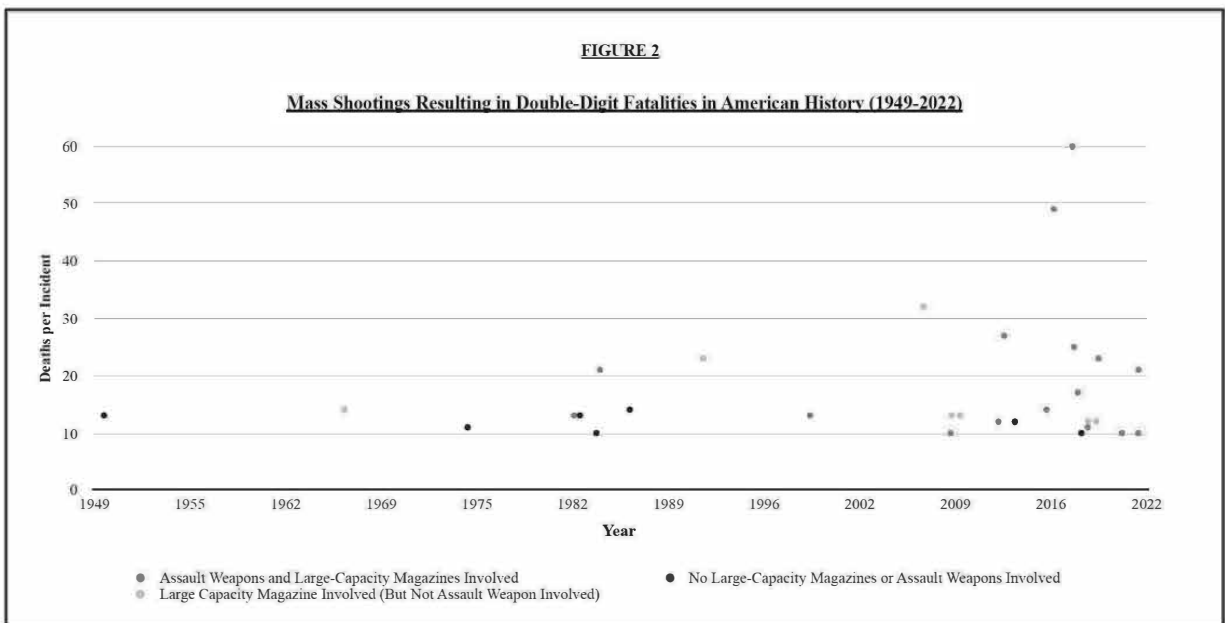
Graduate Research and Teaching Assistantship, School of International Service, American University, 1989-1992

American Hellenic Educational Progressive Association (AHEPA) College Scholarship, 1986

Political Science Student of the Year, Wilkes-Barre Area School District, 1986

**E IBIT B**








## **EXHIBIT C**

LOUIS KLAREVAS  
**RAMPAGE NATION**  
SECURING AMERICA FROM MASS SHOOTINGS

 **Prometheus Books**  
59 John Glenn Drive  
Amherst, New York 14228

**BREAKING THE TRINITY 239**

in a class all by itself. No other advanced, Western democracy experiences the magnitude of gun violence that presently afflicts American society.<sup>28</sup> This is particularly true when it comes to mass shootings.<sup>29</sup>

★ ★ ★

The United States does little to regulate firearms, especially at the federal level.<sup>30</sup> While it goes to great lengths to restrict access to WMDs and IEDs, the same can't be said for its efforts to keep firearms out of the hands of high-risk individuals. Indeed, the American experience with gun control nationwide is so limited that it can actually be chronicled in a few bullet points:

- The National Firearms Act of 1934: Heavily regulated machine guns, short-barrel rifles and shotguns, and silencers.
- The Federal Firearms Act of 1938: Established a federal licensing system to regulate manufacturers, importers, and dealers of firearms.
- The Omnibus Crime Control and Safe Streets Act of 1968: Prohibited anyone under twenty-one years of age from purchasing a handgun.
- The Gun Control Act of 1968: Required that all interstate firearms transfers or sales be made through a federally licensed firearms dealer and prohibited certain categories of people—felons (indicted or convicted), fugitives, drug abusers, mentally ill persons (as determined by adjudication), illegal aliens, dishonorably discharged servicemen, US-citizenship renouncers, and domestic abusers—from possessing firearms.<sup>31</sup>
- The Firearm Owners Protection Act of 1986: Barred the purchase or transfer of automatic weapons without government approval.
- The Undetectable Firearms Act of 1988: Required that all firearms have at least 3.7 oz. of metal that can be detected by a metal detector.
- The Gun-Free School Zones Act of 1990: Criminalized possession or discharge of a firearm in a school zone.
- The Brady Handgun Violence Prevention Act of 1993: Required

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that anyone attempting to purchase a firearm from a federally licensed dealer pass a background check.<sup>32</sup>

- The Federal Assault Weapons Ban of 1994: Banned the sale and possession of semiautomatic assault weapons and extended-capacity magazines not grandfathered prior to the enactment of the law.<sup>33</sup>

Of all of these measures, the National Firearms Act of 1934 and the Assault Weapons Ban of 1994 (AWB) were the only ones instituted primarily in an effort to reduce the carnage of mass shootings. The former was passed in response to a series of bloody gangland executions, including the infamous 1929 St. Valentine's Day massacre in Chicago.<sup>34</sup> While there are still machine guns in circulation, the National Firearm Act, in conjunction with the Firearm Owners Protection Act of 1986, sharply cut the availability of machine guns, which likely explains the complete elimination of massacres perpetrated with such automatic-fire weapons.

Like the National Firearms Act, the AWB was introduced following several high-profile mass shootings in the early 1990s: the Luby's restaurant, 101 California Street office complex, and Long Island Railroad train car massacres.<sup>35</sup> Signed into law by President Bill Clinton, the AWB went into effect on September 13, 1994. At the insistence of the gun-rights lobby, however, the bill contained a ten-year sunset provision. As Congress never renewed the ban, it automatically expired on September 13, 2004.

The decade the law was in effect nonetheless resulted in a unique experiment, allowing us to discern what impact, if any, the ban had on gun violence in general and mass shootings in particular. As to the former, the academic consensus seems to be that the AWB had a minimal impact on reducing violent crime.<sup>36</sup> This hardly comes as a surprise. After all, most crimes don't involve assault weapons. The real test should be: Did it succeed in its intended purpose of reducing rampage violence? The answer is a resounding yes.

Let's take a closer look.

The best way to assess the impact of something is to conduct what, in social science, we commonly refer to as a time-series analysis. Basically, that's a fancy name for a before-and-after test. Figures 7.1

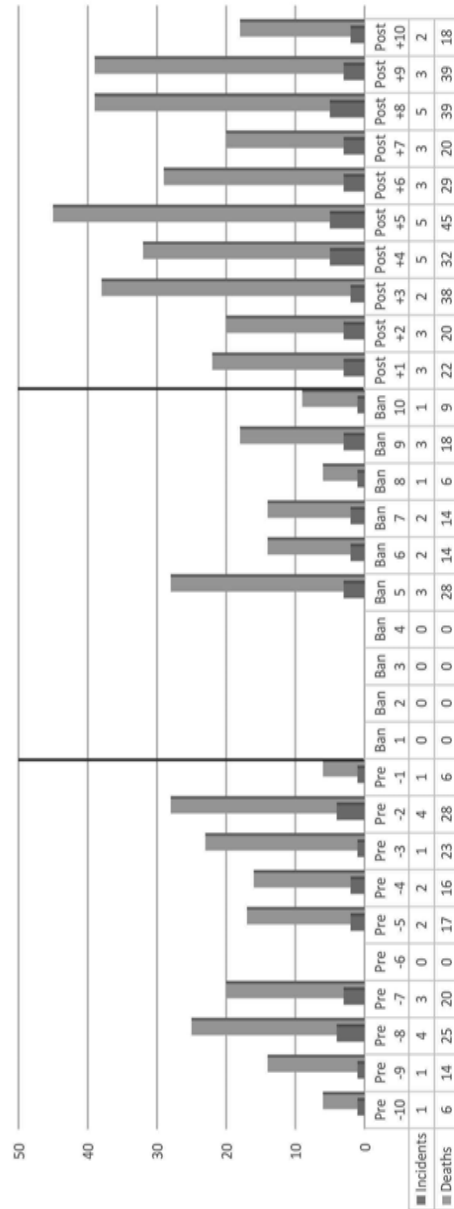


Fig. 7.1. Gun Massacres Before, During, and After the Assault Weapons Ban of 1994.

Note: The lines in the graph demarcate the start and end points of the Assault Weapons Ban, which was in effect from September 13, 1994, through September 12, 2004. The data are drawn from Table 3.2.

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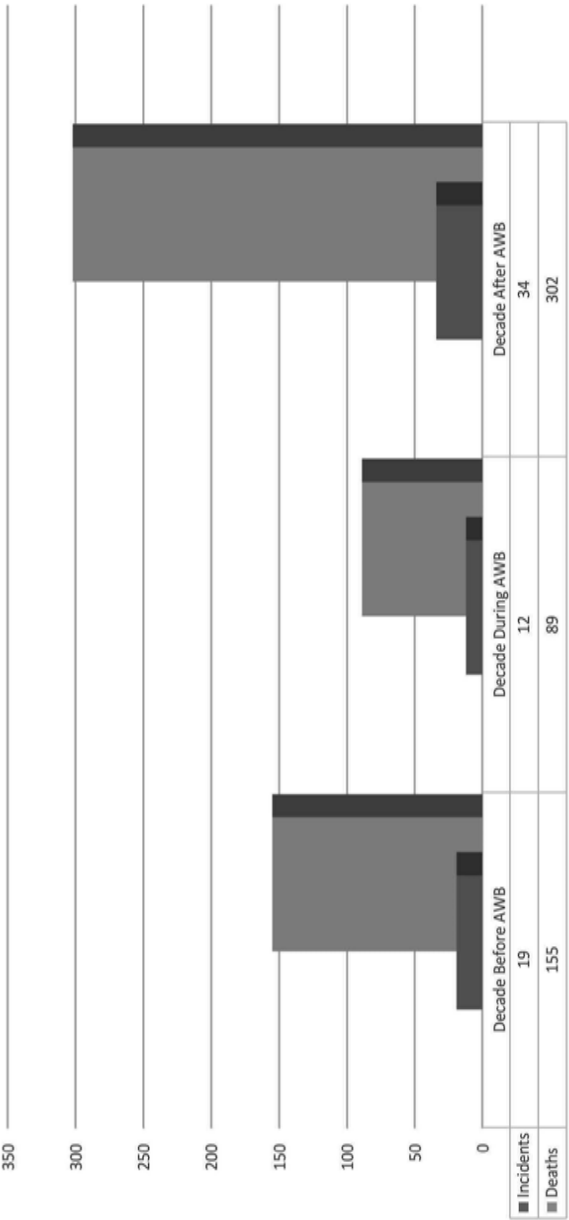


Fig. 7.2. Gun Massacres by Decade Before, During, and After the Assault Weapons Ban of 1994.  
Note: The Assault Weapons Ban was in effect from September 13, 1994, through September 12, 2004.  
The data are drawn from Table 3.2.

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and 7.2 provide a look at the before-and-after pictures. In the decade prior to the enactment of the AWB, the United States experienced nineteen gun massacres that resulted in 155 cumulative deaths, for an average death toll of 8.2 fatalities per incident. During the ten-year period that the AWB was in effect, the numbers declined substantially, with only twelve gun massacres, resulting in eighty-nine deaths, for an average of 7.4 fatalities per incident.<sup>37</sup> What's particularly astounding about this time period is that during the first four and a half years of the ban, there wasn't a single gun massacre in the United States. Not one. This is unprecedented in modern American history.<sup>38</sup> Since 1966, the longest streaks without a gun massacre prior to era of the AWB were two instances of consecutive years (1969–1970 and 1979–1980).<sup>39</sup> Then, all of a sudden, from September 1994 to April 1999, the country experienced a long calm. As further evidence of the AWB's effectiveness, once it expired, rampages returned with a vengeance. In the ten years after the ban, the number of gun massacres nearly tripled to thirty-four incidents, sending the total number of deaths skyrocketing to 302, for an average of 8.9 fatalities per incident.<sup>40</sup> These numbers paint a clear picture: America's experiment, while short-lived, was also extremely successful.<sup>41</sup>

## ZEROING OUT GUN MASSACRES

The biggest takeaway from America's experience with a ban on assault weapons and extended-capacity magazines is that gun-control legislation can save lives. But is there a way to get to zero? Is there a way to eliminate gun massacres once and for all? For that, we have to look overseas for insights.

One of the biggest obstacles to successful gun control is the ability to transport firearms across open, contiguous borders. In the United States, it's a problem that allows guns to flow freely from states with lax laws into states with strict laws. A common complaint frequently leveled by elected officials in places like California, Illinois, Maryland, New York, and Massachusetts is that people just need to drive across a state line and they can readily obtain firearms that they can then easily—if perhaps illegally—bring back into their jurisdictions.<sup>42</sup> That



## **EXHIBIT D**

# The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017

Louis Klarevas, PhD, Andrew Conner, BS, David Hemenway, PhD

**Objectives.** To evaluate the effect of large-capacity magazine (LCM) bans on the frequency and lethality of high-fatality mass shootings in the United States.

**Methods.** We analyzed state panel data of high-fatality mass shootings from 1990 to 2017. We first assessed the relationship between LCM bans overall, and then federal and state bans separately, on (1) the occurrence of high-fatality mass shootings (logit regression) and (2) the deaths resulting from such incidents (negative binomial analysis). We controlled for 10 independent variables, used state fixed effects with a continuous variable for year, and accounted for clustering.

**Results.** Between 1990 and 2017, there were 69 high-fatality mass shootings. Attacks involving LCMs resulted in a 62% higher mean average death toll. The incidence of high-fatality mass shootings in non-LCM ban states was more than double the rate in LCM ban states; the annual number of deaths was more than 3 times higher. In multivariate analyses, states without an LCM ban experienced significantly more high-fatality mass shootings and a higher death rate from such incidents.

**Conclusions.** LCM bans appear to reduce both the incidence of, and number of people killed in, high-fatality mass shootings. (*Am J Public Health.* 2019;109:1754–1761. doi:10.2105/AJPH.2019.305311)

The recent spate of gun massacres in the United States has re-energized the debate over how to prevent such tragedies.<sup>1</sup> A common response to high-profile acts of gun violence is the promotion of tighter gun legislation, and there is some evidence that laws imposing tighter restrictions on access to firearms have been associated with lower levels of mass shootings.<sup>2</sup> One proposal that has received renewed interest involves restricting the possession of large-capacity magazines (LCMs).<sup>3–5</sup> This raises an important question: what has been the impact of LCM bans on high-fatality mass shootings?

In an attempt to arrest an uptick in mass shooting violence in the early 1990s, Congress in 1994 enacted the federal assault weapons ban, which, among other things, restricted ownership of certain ammunition-feeding devices.<sup>6,7</sup> The law, which contained a sunset provision, was allowed to expire a decade later. Pursuant to that ban (18 USC §921(a) [1994]; repealed), it was illegal to possess LCMs—defined as any ammunition-feeding device holding more

than 10 bullets—unless the magazines were manufactured before the enactment of the ban. LCM restrictions are arguably the most important component of assault weapons bans because they also apply to semiautomatic firearms without military-style features.<sup>8,9</sup>

Beginning with New Jersey in 1990, some states implemented their own regulations on LCMs. Today, 9 states and the District of Columbia restrict the possession of LCMs. The bans vary along many dimensions, including maximum bullet capacity of permissible magazines, grandfathering of existing LCMs, and applicable firearms. Moreover, overlaps sometimes exist between assault weapons bans and LCM bans, but not in all states. For example, California instituted a ban

on assault weapons in 1989, but LCMs remained unregulated in the state until 1994, when the federal ban went into effect. In 2000, California's own statewide ban on LCMs took effect as a safeguard in the event the federal ban expired, which happened in 2004.<sup>10,11</sup>

LCMs provide a distinct advantage to active shooters intent on murdering numerous people: they increase the number of rounds that can be fired at potential victims before having to pause to reload or switch weapons. Evidence shows that victims struck by multiple rounds are more likely to die, with 2 studies finding that, when compared with the fatality rates of gunshot wound victims who were hit by only a single bullet, the fatality rates of those victims hit by more than 1 bullet were more than 60% higher.<sup>12,13</sup> Being able to strike human targets with more than 1 bullet increases shooters' chances of killing their victims. Analyses of gunshot wound victims at level I trauma centers have suggested that this multiple-impact capability is often attributable to the use of LCMs.<sup>14,15</sup>

In addition, LCMs provide active shooters with extended cover.<sup>16</sup> During an attack, perpetrators are either firing their guns or not firing their guns. While gunmen are firing, it is extremely difficult for those in the line of fire to take successful defensive maneuvers. But if gunmen run out of bullets, there are lulls in the shootings, as the perpetrators are forced to pause their attacks to reload or change weapons. These pauses provide opportunities for people to intervene and disrupt a shooting. Alternatively, they provide individuals in

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harm's way with a chance to flee or hide. Legislative endeavors that restrict access to LCMs are implemented with the express objective of reducing an active shooter's multiple-impact capability and extended cover.<sup>10</sup>

Although mass shootings have received extensive study, there has been little scholarly analysis of LCM bans.<sup>17–24</sup> The studies undertaken that have broached the subject of ammunition capacity have primarily concentrated on the effect of LCM bans on violent crimes other than mass shootings or on the impact of the assault weapons bans on mass shootings.<sup>25–27</sup>

Evidence suggests that firearms equipped with LCMs are involved in a disproportionate share of mass shootings.<sup>10,20,28</sup> Proponents of LCM bans believe that without LCMs, fewer people will be killed in a mass shooting, other things equal. In turn, fewer shootings will cross the threshold required to be classified as what we call a “high-fatality mass shooting” ( $\geq 6$  victims shot to death). If LCM bans are effective, we should expect to find that high-fatality mass shootings occur at a lower incidence rate when LCM bans are in place, and fewer people are killed in such attacks. But have LCM bans actually saved lives in practice? To our knowledge, the impact of LCM bans has never been systematically assessed. This study fills that void.

## METHODS

Mass shootings have been defined in a variety of ways, with some analyses setting the casualty threshold as low as 2 people wounded or killed and others requiring a minimum of 7 gunshot victims.<sup>18,22,29</sup> We focused on high-fatality mass shootings—the deadliest and most disturbing of such incidents—which are defined as intentional crimes of gun violence with 6 or more victims shot to death, not including the perpetrators.<sup>20,30,31</sup> After an exhaustive search, we identified 69 such incidents in the United States between 1990 and 2017. We then discerned whether each high-fatality mass shooting involved a LCM—unless otherwise stated, defined consistent with the 1994 federal ban as a detachable ammunition-feeding device capable of holding more than 10 bullets. (See Table 1 for a list of incidents and for additional details on

the search and identification strategy we employed.)

The first state to enact an LCM ban was New Jersey in 1990. Since then, another 8 states and the District of Columbia have enacted LCM bans (Table A, available as a supplement to the online version of this article at <http://www.ajph.org>).<sup>10</sup> With no LCM bans in effect before 1990, a priori we chose that year to begin our analysis to avoid inflating the impact of the bans. Our data set extends 28 years, from 1990 through 2017. As a secondary analysis, we used a 13-year data set, beginning in 2005, the first full year after the federal assault weapons ban expired.

Our primary outcome measures were the incidence of high-fatality mass shootings and the number of victims killed. We distinguished between high-fatality mass shootings occurring with and without a ban in effect. Because the federal ban was in effect nationwide from September 13, 1994, through September 12, 2004, we coded every state as being under an LCM ban during that 10-year timeframe.

Our interest was in the effect of LCM bans. We ran regression analyses to determine if any relationship between LCM bans and high-fatality mass shootings can be explained by other factors. In our state-year panel multivariate analyses, the outcome variables were (1) whether an LCM-involved high-fatality mass shooting occurred, (2) whether any high-fatality mass shooting occurred, (3) the number of fatalities in an LCM-involved high-fatality mass shooting, and (4) the number of fatalities in any high-fatality mass shooting. Our analyses first combined and then separated federal and state LCM bans.

Consistent with the suggestions and practices of the literature on firearm homicides and mass shootings, our explanatory variables are population density; proportion of population aged 19 to 24 years, aged 25 to 34 years, that is Black, and with a college degree; real per-capita median income; unemployment rate; and per-capita prison population.<sup>2,26,27,32</sup> We also added a variable for percentage of households with a firearm. All regression models controlled for total state population. When the dependent variable reflected occurrences of incidents (ordered choice data), we used logit regression; we ran probit regression as a sensitivity analysis. We had multiple observations for individual

states. To control for this, we utilized cluster-robust standard errors to account for the clustering of observations. When the dependent variable reflected deaths (count data), we used negative binomial regression; Gius used a Poisson regression, and we used that approach as a sensitivity analysis.<sup>26</sup> We included state fixed effects. We used a continuous variable for year because the rate of high-fatality mass shootings has increased over time. For purposes of sensitivity analysis, we also replaced the linear yearly trend with a quadratic function. We performed multivariate statistical analyses by using Stata/IC version 15.1 (StataCorp LP, College Station, TX).

Population data came from the US Census Bureau, unemployment data came from the Bureau of Labor Statistics, and imprisonment data came from the Bureau of Justice Statistics. The percentage of households with a firearm was a validated proxy (the percentage of suicides that are firearm suicides) derived from Centers for Disease Control and Prevention National Vital Statistics Data.<sup>33</sup>

## RESULTS

Between 1990 and 2017, there were 69 high-fatality mass shootings ( $\geq 6$  victims shot to death) in the United States. Of these, 44 (64%) involved LCMs, 16 did not (23%), and for 9 (13%) we could not determine whether LCMs were used (Table 1). The mean number of victims killed in the 44 LCM-involved high-fatality mass shootings was 11.8; including the unknowns resulted in that average falling to 11.0 (not shown). The mean number of victims killed in high-fatality mass shootings in which the perpetrator did not use an LCM was 7.3 (Table B, available as a supplement to the online version of this article at <http://www.ajph.org>); including the unknowns resulted in that average falling to 7.1 (not shown). When we excluded unknown cases, the data indicated that utilizing LCMs in high-fatality mass shootings resulted in a 62% increase in the mean death toll.

Data sets of mass shooting fatalities by their nature involve truncated data, with the mode generally being the baseline number of fatalities required to be included in the data set (6 fatalities in the current study). Our data

TABLE 1—High-Fatality Mass Shootings in the United States, 1990–2017

Incident	Date	City	State	LCM	Deaths, No.	State LCM Ban	Federal Assault Weapons Ban
1	Jun 18, 1990	Jacksonville	FL	Y	9	N	N
2	Jan 26, 1991	Chimayo	NM	N	7	N	N
3	Aug 9, 1991	Waddell	AZ	N	9	N	N
4	Oct 16, 1991	Killeen	TX	Y	23	N	N
5	Nov 7, 1992	Morro Bay and Paso Robles	CA	N	6	N	N
6	Jan 8, 1993	Palatine	IL	N	7	N	N
7	May 16, 1993	Fresno	CA	Y	7	N	N
8	Jul 1, 1993	San Francisco	CA	Y	8	N	N
9	Dec 7, 1993	Garden City	NY	Y	6	N	N
10	Apr 20, 1999	Littleton	CO	Y	13	Y	Y
11	Jul 12, 1999	Atlanta	GA	U	6	Y	Y
12	Jul 29, 1999	Atlanta	GA	Y	9	Y	Y
13	Sep 15, 1999	Fort Worth	TX	Y	7	Y	Y
14	Nov 2, 1999	Honolulu	HI	Y	7	Y	Y
15	Dec 26, 2000	Wakefield	MA	Y	7	Y	Y
16	Dec 28, 2000	Philadelphia	PA	Y	7	Y	Y
17	Aug 26, 2002	Rutledge	AL	N	6	Y	Y
18	Jan 15, 2003	Edinburg	TX	U	6	Y	Y
19	Jul 8, 2003	Meridian	MS	N	6	Y	Y
20	Aug 27, 2003	Chicago	IL	N	6	Y	Y
21	Mar 12, 2004	Fresno	CA	N	9	Y	Y
22	Nov 21, 2004	Birchwood	WI	Y	6	N	N
23	Mar 12, 2005	Brookfield	WI	Y	7	N	N
24	Mar 21, 2005	Red Lake	MN	Y	9	N	N
25	Jan 30, 2006	Goleta	CA	Y	7	Y	N
26	Mar 25, 2006	Seattle	WA	Y	6	N	N
27	Jun 1, 2006	Indianapolis	IN	Y	7	N	N
28	Dec 16, 2006	Kansas City	KS	N	6	N	N
29	Apr 16, 2007	Blacksburg	VA	Y	32	N	N
30	Oct 7, 2007	Crandon	WI	Y	6	N	N
31	Dec 5, 2007	Omaha	NE	Y	8	N	N
32	Dec 24, 2007	Carnation	WA	U	6	N	N
33	Feb 7, 2008	Kirkwood	MO	Y	6	N	N
34	Sep 2, 2008	Alger	WA	U	6	N	N
35	Dec 24, 2008	Covina	CA	Y	8	Y	N
36	Jan 27, 2009	Los Angeles	CA	N	6	Y	N
37	Mar 10, 2009	Kinston, Samson, and Geneva	AL	Y	10	N	N
38	Mar 29, 2009	Carthage	NC	N	8	N	N
39	Apr 3, 2009	Binghamton	NY	Y	13	Y	N
40	Nov 5, 2009	Fort Hood	TX	Y	13	N	N
41	Jan 19, 2010	Appomattox	VA	Y	8	N	N

*Continued*

TABLE 1—Continued

Incident	Date	City	State	LCM	Deaths, No.	State LCM Ban	Federal Assault Weapons Ban
42	Aug 3, 2010	Manchester	CT	Y	8	N	N
43	Jan 8, 2011	Tucson	AZ	Y	6	N	N
44	Jul 7, 2011	Grand Rapids	MI	Y	7	N	N
45	Aug 7, 2011	Copley Township	OH	N	7	N	N
46	Oct 12, 2011	Seal Beach	CA	N	8	Y	N
47	Dec 25, 2011	Grapevine	TX	N	6	N	N
48	Apr 2, 2012	Oakland	CA	N	7	Y	N
49	Jul 20, 2012	Aurora	CO	Y	12	N	N
50	Aug 5, 2012	Oak Creek	WI	Y	6	N	N
51	Sep 27, 2012	Minneapolis	MN	Y	6	N	N
52	Dec 14, 2012	Newtown	CT	Y	27	N	N
53	Jul 26, 2013	Hialeah	FL	Y	6	N	N
54	Sep 16, 2013	Washington	DC	N	12	Y	N
55	Jul 9, 2014	Spring	TX	Y	6	N	N
56	Sep 18, 2014	Bell	FL	U	7	N	N
57	Feb 26, 2015	Tyrone	MO	U	7	N	N
58	May 17, 2015	Waco	TX	Y	9	N	N
59	Jun 17, 2015	Charleston	SC	Y	9	N	N
60	Aug 8, 2015	Houston	TX	U	8	N	N
61	Oct 1, 2015	Roseburg	OR	Y	9	N	N
62	Dec 2, 2015	San Bernardino	CA	Y	14	Y	N
63	Feb 21, 2016	Kalamazoo	MI	Y	6	N	N
64	Apr 22, 2016	Piketon	OH	U	8	N	N
65	Jun 12, 2016	Orlando	FL	Y	49	N	N
66	May 27, 2017	Brookhaven	MS	U	8	N	N
67	Sep 10, 2017	Plano	TX	Y	8	N	N
68	Oct 1, 2017	Las Vegas	NV	Y	58	N	N
69	Nov 5, 2017	Sutherland Springs	TX	Y	25	N	N

*Note.* LCM = large-capacity magazine; N = no; U = unknown; Y = yes. From September 13, 1994, until and including September 12, 2004, each and every state, including the District of Columbia, was subject to a ban on LCMs pursuant to the federal assault weapons ban. To collect the data in Table 1, we searched the following news media resources for every shooting that resulted in 6 or more fatalities: America's Historical Newspapers, EBSCO, Factiva, Gannett Newsstand, Google News Archive, Lexis-Nexis, Newspaper Archive, Newspaper Source Plus, Newspapers.com, Newswires, ProQuest Historical Newspapers, and ProQuest Newsstand. We also reviewed mass shooting data sets maintained by *Mother Jones*, the *New York Times*, and *USA Today*. In addition to news media sources, we reviewed reports on mass shootings produced by think tank, policy advocacy, and governmental organizations, including the US Federal Bureau of Investigation Supplementary Homicide Reports, the crowdsourced Mass Shooting Tracker, and the open-source databases maintained by the Gun Violence Archive and the Stanford University Geospatial Center. Finally, when it was relevant, we also reviewed court records as well as police, forensic, and autopsy reports. As a general rule, when government sources were available, they were preferred over other sources. Furthermore, when media sources conflicted on the number of casualties or the weaponry involved, the later sources were privileged (as later reporting is often more accurate).

set of high-fatality mass shootings was no exception. As such, the median average number of fatalities for each subset of incidents—those involving and those not involving LCMs—was necessarily lower than the mean average. Nevertheless, like the mean average, the median average was higher when LCMs were employed—a median

average of 8 fatalities per incident compared with 7 fatalities per incident for attacks not involving LCMs.

For the 60 incidents in which it was known if an LCM was used, in 44 the perpetrator used an LCM. Of the 44 incidents in which the perpetrators used LCMs, 77% (34/44) were in nonban states. In the 16 incidents in

which the perpetrators did not use LCMs, 50% (8/16) were in nonban states (Table B, available as a supplement to the online version of this article at <http://www.ajph.org>). Stated differently, in nonban states, 81% (34/42) of high-fatality mass shooting perpetrators used LCMs; in LCM-ban states, only 55% (10/18) used LCMs.

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The rate of high-fatality mass shootings increased considerably after September 2004 (when the federal assault weapons ban expired). In the 10 years the federal ban was in effect, there were 12 high-fatality mass shootings and 89 deaths (an average of 1.2 incidents and 8.9 deaths per year). Since then, through 2017, there have been 48 high-fatality mass shootings and 527 deaths (an average of 3.6 incidents and 39.6 deaths per year in these 13.3 years).

Of the 69 high-fatality mass shootings from 1990 to 2017, 49 occurred in states without an LCM ban in effect at the time and 20 in states with a ban in effect at the time. The annual incidence rate for high-fatality mass shootings in states without an LCM ban was 11.7 per billion population; the annual incidence rate for high-fatality mass shootings in states with an LCM ban was 5.1 per billion population. In that 28-year period, the rate of high-fatality mass shootings per capita was 2.3 times higher in states without an LCM ban (Table 2).

Non-LCM ban states had not only more incidents but also more deaths per incident (10.9 vs 8.2). The average annual number of high-fatality mass shooting deaths per billion population in the non-LCM ban states was

127.4. In the LCM ban states, it was 41.6 (Table 2).

For the time period beginning with the first full calendar year following the expiration of the federal assault weapons ban (January 1, 2005–December 31, 2017), there were 47 high-fatality mass shootings in the United States. Of these, 39 occurred in states where an LCM ban was not in effect, and 8 occurred in LCM ban locations. The annual incidence rate for high-fatality mass shootings in states without an LCM ban was 13.2 per billion population; for states with an LCM ban, it was 7.4 per billion population (Table 2). During this period, non-LCM ban states had not only more incidents but also more deaths per incident (11.4 vs 9.4). In terms of high-fatality mass shooting deaths per billion population, the annual number of deaths in the non-LCM ban states was 150.6; in the LCM ban states it was 69.2 (Table 2).

When we limited the analysis solely to high-fatality mass shootings that definitely involved LCMs, the differences between ban and nonban states became larger. For example, for the entire period of 1990 to 2017, of the 44 high-fatality mass shootings that involved LCMs, the annual incidence rate for LCM-involved high-fatality mass shootings

in nonban states was 8.1 per billion population; in LCM-ban states it was 2.5 per billion population. The annual rate of high-fatality mass shooting deaths in the non-LCM ban states was 102.1 per billion population; in the LCM ban states it was 23.3. In terms of LCM-involved high-fatality mass shootings, we also found comparable wide differences in incidence and fatality rates between ban and nonban states for the post-federal assault weapons ban period (2005–2017; Table 2).

We found largely similar results in the multivariate analyses (1990–2017). States that did not ban LCMs were significantly more likely to experience LCM-involved high-fatality mass shootings as well as more likely to experience any high-fatality mass shootings (regardless of whether an LCM was involved). States that did not ban LCMs also experienced significantly more deaths from high-fatality mass shootings, operationalized as the absolute number of fatalities (Table 3).

When the LCM bans were separated into federal and state bans, both remained significantly related to the incidence of LCM-involved high-fatality mass shooting events and to the number of LCM-involved high-fatality mass shooting deaths. The associations between federal and state bans and

TABLE 2—High-Fatality Mass Shootings ( $\geq 6$  Victims Shot to Death) by Whether LCM Bans Were in Effect: United States, 1990–2017

	Average Annual Population, No. (Millions)	Total Incidents, No.	Annual Incidents per Billion Population, No.	Total Deaths, No.	Annual Deaths per Billion Population, No.	Deaths per Incident, No.
All high-fatality mass shootings, 1990–2017 (28 y)						
Non-LCM ban states	149.7	49	11.7	534	127.4	10.9
LCM ban states	140.7	20	5.1	164	41.6	8.2
All high-fatality mass shootings, 2005–2017 (13 y)						
Non-LCM ban states	227.8	39	13.2	446	150.6	11.4
LCM ban states	83.4	8	7.4	75	69.2	9.4
LCM-involved high-fatality mass shootings, 1990–2017 (28 y)						
Non-LCM ban states	149.7	34	8.1	428	102.1	12.6
LCM ban states	140.7	10	2.5	92	23.3	9.2
LCM-involved high-fatality mass shootings, 2005–2017 (13 y)						
Non-LCM ban states	227.8	28	9.5	369	124.6	13.2
LCM ban states	83.4	4	3.7	42	38.7	10.5
Non-LCM high-fatality mass shootings, 1990–2017 (28 y)						
Non-LCM ban states	149.7	8	1.9	56	13.4	7.0
LCM ban states	140.7	8	2.0	60	15.2	7.5

Note. LCM = large-capacity magazine.

**TABLE 3—Multivariate Results of the Relationship Between LCM Bans and High-Fatality Mass Shootings ( $\geq 6$  Victims Shot to Death), 1990–2017 Combined Federal and State Large Capacity Magazine Bans: United States**

	LCM-Involved High-Fatality Mass Shootings, b (95% CI)		All High-Fatality Mass Shootings, b (95% CI)	
	Incidents <sup>a</sup>	No. Deaths <sup>b</sup>	Incidents <sup>a</sup>	No. Deaths <sup>b</sup>
All LCM bans (federal and state)	-2.217 (-3.493, -0.940)	-5.912 (-9.261, -2.563)	-1.283 (-2.147, -0.420)	-3.660 (-5.695, -1.624)
Population density	-0.011 (-0.052, 0.031)	0.013 (-0.068, 0.095)	0.001 (-0.003, 0.006)	0.011 (-0.005, 0.026)
% aged 19–24 y	-0.480 (-1.689, 0.730)	-2.496 (-5.893, 0.901)	0.283 (-0.599, 1.164)	-0.585 (-2.666, 1.495)
% aged 25–34 y	-0.801 (-1.512, -0.089)	-2.390 (-4.391, -0.388)	-0.337 (-0.871, 0.197)	-1.114 (-2.463, 0.235)
% Black	-0.227 (-1.062, 0.607)	-0.654 (-2.831, 1.522)	-0.163 (-0.703, 0.377)	-0.261 (-1.391, 0.870)
% with a bachelor's degree or higher	-0.009 (-0.492, 0.474)	-0.469 (-1.590, 0.652)	0.143 (-0.214, 0.501)	0.183 (-0.715, 1.081)
Percentage of households with a firearm (proxy)	-0.047 (-0.195, 0.101)	-0.147 (-0.546, 0.251)	-0.020 (-0.131, 0.091)	-0.084 (-0.368, 0.200)
Median household income	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)
Unemployment rate	-0.072 (-0.293, 0.149)	-0.476 (-1.081, 0.129)	0.041 (-0.135, 0.216)	-0.182 (-0.628, 0.263)
Imprisonment rate (per 100 000 population)	-0.006 (-0.012, 0.001)	-0.007 (-0.017, 0.004)	-0.001 (-0.006, 0.003)	-0.003 (-0.012, 0.007)
Total population	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)
Pseudo $R^2$	0.31	0.16	0.26	0.11

Note. CI = confidence interval; LCM = large-capacity magazine. There were a total of 1428 observations in state-years (51 jurisdictions—all 50 states plus Washington, DC—over a 28-year period). Mean variance inflation factor = 3.49.

<sup>a</sup>Logit regression.

<sup>b</sup>Negative binomial regression.

the overall incidence of all high-fatality mass shootings as well as the total number of victims in these events remained strongly negative but was only sometimes statistically significant (Table 4).

In terms of sensitivity analyses, using probit instead of logit gave us similar results (not shown). When the outcome variable was the number of high-fatality mass shooting deaths, we obtained largely similar results concerning the association between LCM bans and the outcome variables, regardless of whether we used Poisson or negative binomial regression (not shown). Moreover, replacing the linear yearly trend with a quadratic function did not change the major results of the analyses (not shown). Variance inflation factors for all the independent variables never exceeded 10.0, with the variance inflation factor for LCM ban variables always being less than 2.0, indicating that there were no significant multicollinearity issues (Tables 3 and 4).

## DISCUSSION

In the United States, LCMs are disproportionately used in high-fatality mass shootings (incidents in which  $\geq 6$  victims are shot to death). In at least 64% of the incidents

since 1990, perpetrators used LCMs. (For 23%, we determined that they did not involve LCMs, and a determination could not be made for the remaining 13%.) Previous research has shown that LCM firearms are used in a high share of mass murders (typically defined as  $\geq 4$  homicides) and murders of police.<sup>9</sup>

We could not find reliable estimates of LCM firearms in the US gun stock. However, it is likely much lower than 64%, given that commonly owned firearms such as revolvers, bolt-action rifles, and shotguns are not typically designed to be LCM-capable. During the decade the federal assault weapons ban was in effect, no firearms were legally manufactured with LCMs for sale in the United States. In the postban era, semiautomatic firearms, especially pistols, are often sold with factory-issue LCMs, but firearms that are not semiautomatic are not sold with such magazines.

Why do we find LCMs so prominent among high-fatality mass shootings? We suspect there are 2 main reasons. The first is that perpetrators probably deliberately select LCMs because they facilitate the ability to fire many rounds without having to stop to reload. The second reason is that the ability of shooters to kill many victims—especially the 6 victims required to be included in our data set—may be reduced if LCMs are not

available. In other words, the first explanation is that shooters perceive LCMs to be more effective at killing many people; the second explanation is that LCMs are indeed more effective at killing many people.

High-fatality mass shootings are not common, even in the United States. Between 1990 and 2017, there has been an average of 2.5 incidents per year, with an average of 25 people killed annually in such attacks. However, the number of incidents and the number of people killed per incident have been increasing since the end of the federal assault weapons ban.

In our study, we found that bans on LCMs were associated with both lower incidence of high-fatality mass shootings and lower fatality tolls per incident. The difference in incidence and overall number of fatalities between states, with and without bans, was even greater for LCM-involved high-fatality mass shootings.

The multivariate results are largely consistent with these bivariate associations. When we controlled for 10 independent variables often associated with overall crime rates, as well as state and year effects, states with LCM bans had lower rates of high-fatality mass shootings and fewer high-fatality mass shooting deaths. When we investigated federal and state bans separately in the multiple



**TABLE 4—Multivariate Results of the Relationship Between Large Caliber Magazine Bans and High-Fatality Mass Shootings ( $\geq 6$  Victims Shot to Death), 1990–2017 Separate Federal and State Large Caliber Magazine Bans: United States**

	LCM-Involved High-Fatality Mass Shootings, b (95% CI)		All High-Fatality Mass Shootings, b (95% CI)	
	Incidents <sup>a</sup>	No. Deaths <sup>b</sup>	Incidents <sup>a</sup>	No. Deaths <sup>b</sup>
Federal LCM ban	-1.434 (-2.622, -0.245)	-3.571 (-7.103, -0.038)	-0.895 (-1.806, 0.016)	-2.570 (-4.902, -0.238)
State LCM bans	-2.603 (-4.895, -0.311)	-8.048 (-15.172, -0.925)	-1.277 (-2.977, 0.422)	-3.082 (-7.227, 1.064)
Population density	-0.012 (-0.055, 0.030)	-0.001 (-0.085, 0.083)	0.001 (-0.003, 0.006)	0.009 (-0.007, 0.024)
% aged 19–24 y	-0.311 (-1.499, 0.878)	-2.589 (-6.057, 0.879)	0.342 (-0.551, 1.236)	-0.531 (-2.759, 1.698)
% aged 25–34 y	-0.812 (-1.532, -0.093)	-2.660 (-4.848, -0.471)	-0.323 (-0.864, 0.217)	-0.848 (-2.236, 0.539)
% Black	-0.229 (-1.101, 0.643)	-0.770 (-3.232, 1.693)	-0.150 (-0.698, 0.398)	-0.154 (-1.321, 1.013)
% with a bachelor's degree or higher	-0.031 (-0.447, 0.509)	-0.479 (-1.577, 0.618)	0.156 (-0.199, 0.511)	0.269 (-0.567, 1.106)
Percentage of households with a firearm (proxy)	-0.055 (-0.210, 0.101)	-0.227 (-0.651, 0.196)	-0.019 (-0.133, 0.094)	-0.107 (-0.399, 0.186)
Median household income	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)
Unemployment rate	-0.061 (-0.284, 0.162)	-0.420 (-1.041, 0.201)	0.046 (-0.132, 0.224)	-0.157 (-0.619, 0.305)
Imprisonment rate (per 100 000 population)	-0.006 (-0.013, 0.000)	-0.012 (-0.026, 0.002)	-0.002 (-0.007, 0.003)	-0.003 (-0.014, 0.007)
Total population	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)	0.000 (0.000, 0.000)
Pseudo $R^2$	0.30	0.15	0.26	0.11

Note. CI = confidence interval; LCM = large-capacity magazine. There were a total of 1428 observations in state-years (51 jurisdictions—all 50 states plus Washington, DC—over a 28-year period). Mean variance inflation factor = 3.45.

<sup>a</sup>Logit regression.

<sup>b</sup>Negative binomial regression.

regressions, both were significantly associated with the incidence of LCM-involved high-fatality mass shootings as well as the number of victims in LCM-involved attacks. The relationship between these bans, considered separately, and all high-fatality mass shooting incidence and deaths is often not statistically significant, although this may be attributable to lack of statistical power (number of observations) to find a statistically significant effect.

Our analysis provides answers to 4 important questions:

1. How often are LCMs used in high-fatality mass shootings? At minimum, 64% of high-fatality mass shootings perpetrated between 1990 and 2017 involved LCMs.
2. Are more people killed when LCMs are used? Yes, and the difference in our data set is substantial and statistically significant (11.8 vs 7.3). We should add that our results likely underestimate the difference because we have a truncated sample (we only examined incidents with at least 6 victim fatalities), compounded by the fact that the number of homicide incidents fell as the number of victims increased.
3. Do states with LCM bans experience high-fatality mass shootings involving LCMs at a lower rate and a lower fatality

count than those states with no such bans in effect? Yes. In fact, the effect is more pronounced for high-fatality mass shootings involving LCMs than for those not involving LCMs.

4. Do states with LCM bans experience high-fatality mass shootings (regardless of whether they involve LCMs) at a lower rate and a lower fatality count than states with no such bans in effect? Yes.

## Limitations

Our study had various limitations. First, although we carefully searched for every high-fatality mass shooting, it is possible that we might have missed some. Nevertheless, we suspect that this is unlikely, because it would mean that others who compiled lists have also missed the same ones, for we checked our list against multiple sources.

Second, our definition of a high-fatality mass shooting is a shooting that results in 6 or more fatal victims. A different threshold criterion (e.g., 6 or more people shot; 5 or more victims killed), might lead to somewhat different results. We expect that as the number of victims in a shooting increases, the likelihood that the perpetrator used an LCM

also increases. Indeed, of the 13 high-fatality mass shootings with 10 or more fatalities in our data set, 12 (92%) involved an LCM.

Third, although many high-fatality mass shootings tend to be highly publicized, in 13% of the incidents we reviewed, we could not determine whether an LCM was used. As a sensitivity analysis, we assessed the assumptions that all of the unknown cases first did, and then did not, involve LCMs. Neither assumption appreciably changed our main results (not shown).

Fourth, as a general rule, clustering standard errors is most appropriate when there is a large number of treated units. Although during the decade of the federal assault weapons bans all 50 states plus the District of Columbia regulated LCMs, during the remaining time periods under examination, only 8 jurisdictions regulated LCMs. As a result, there is the possibility that the standard errors were underestimated in our analyses.<sup>34</sup>

Fifth, there were only 69 events that met our criterion for a “high-fatality mass shooting.” Although 69 is a horrific number of incidents, for statistical purposes, it is a relatively small number and limits the power to detect significant associations. For example, we did not have the statistical power (and thus did not even try) to determine whether

different aspects of the various LCM laws might have differential effects on the incidence of high-fatality mass shootings. Moreover, because of suboptimal statistical power, there is also the possibility that the magnitude of the effects detected was overestimated.<sup>35</sup>

## Public Health Implications

LCMs increase the ability to fire large numbers of bullets without having to pause to reload. Any measure that can force a pause in an active shooting—creating opportunities for those in the line of fire to flee, take cover, or physically confront a gunman—offers a possibility of reducing the number of victims in such an attack. To put it in different terms, if the only firearms available were 18th-century muskets, it is doubtful that mass shootings would be the social problem they are today.

The impact of individual state firearm laws is reduced by the fact that guns often move across state lines—occasionally purchased in locales with more permissive laws and taken to states with more restrictive laws. This is partly why efforts aimed at reducing the frequency and lethality of mass shootings must necessarily be multifaceted and multidisciplinary. Legal restrictions on firearms are merely a part of this broader, public health approach. That being said, the theory behind reducing the availability of LCMs to reduce the number of victims in mass shootings makes sense, and our empirical results, consistent with much of the limited literature on mass shootings, suggest that LCM bans have been effective in saving lives. **AJPH**

## CONTRIBUTORS

L. Klarevas and D. Hemenway designed the study, collected the data, and contributed equally to all parts of the study. A. Conner ran the statistical analyses and helped construct the tables that report the results of the multivariate analyses. All authors approved the final article as submitted.

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## CONFLICTS OF INTEREST

L. Klarevas has, in the past 2 years, served as an expert to the states of Colorado and California in civil litigation that involved the constitutionality of state restrictions on large-capacity magazines. The authors have no additional conflicts of interest to report.

## HUMAN PARTICIPANT PROTECTION

No protocol approval was needed because no human participants were involved in this study.

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## **EXHIBIT E**

## AAST 2018 PODIUM PAPER

# Changes in US mass shooting deaths associated with the 1994–2004 federal assault weapons ban: Analysis of open-source data

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<b>BACKGROUND:</b>	A federal assault weapons ban has been proposed as a way to reduce mass shootings in the United States. The Federal Assault Weapons Ban of 1994 made the manufacture and civilian use of a defined set of automatic and semiautomatic weapons and large capacity magazines illegal. The ban expired in 2004. The period from 1994 to 2004 serves as a single-arm pre-post observational study to assess the effectiveness of this policy intervention.
<b>METHODS:</b>	Mass shooting data for 1981 to 2017 were obtained from three well-documented, referenced, and open-source sets of data, based on media reports. We calculated the yearly rates of mass shooting fatalities as a proportion of total firearm homicide deaths and per US population. We compared the 1994 to 2004 federal ban period to non-ban periods, using simple linear regression models for rates and a Poisson model for counts with a year variable to control for trend. The relative effects of the ban period were estimated with odds ratios. Assault rifles accounted for 430 or 85.8% of the total 501 mass-shooting fatalities reported (95% confidence interval, 82.8–88.9) in 44 mass-shooting incidents. Mass shootings in the United States accounted for an increasing proportion of all firearm-related homicides (coefficient for year, 0.7; $p = 0.0003$ ), with increment in year alone capturing over a third of the overall variance in the data (adjusted $R^2 = 0.3$ ). In a linear regression model controlling for yearly trend, the federal ban period was associated with a statistically significant 9 fewer mass shooting related deaths per 10,000 firearm homicides ( $p = 0.03$ ). Mass-shooting fatalities were 70% less likely to occur during the federal ban period (relative rate, 0.30; 95% confidence interval, 0.22–0.39).
<b>RESULTS:</b>	
<b>CONCLUSION:</b>	Mass-shooting related homicides in the United States were reduced during the years of the federal assault weapons ban of 1994 to 2004. ( <i>J Trauma Acute Care Surg.</i> 2019;86: 11–19. Copyright © 2018 American Association for the Surgery of Trauma.)
<b>LEVEL OF EVIDENCE:</b>	Observational, level II/IV.
<b>KEY WORDS:</b>	Firearms; mass-shootings; assault weapons; epidemiology.

Increases in firearm-related injuries, particularly mass-shooting related fatalities, in the United States have contributed to a polarizing and sometimes contentious debate over gun ownership and limiting weapons characterized as assault weapons.<sup>1,2</sup> Despite the increasing sense that there is an epidemic of indiscriminate firearm violence in our schools and public spaces, there is a paucity of public health evidence on the topic. Among a number of recommendations, a federal Assault Weapons Ban (AWB) has been proposed as a way to prevent and control mass shootings in the United States. In this article, we assess evidence for the effectiveness of such a ban in preventing or controlling mass-shooting homicides in the United States.

While mass shootings occur in other industrialized nations, the United States is particularly prone to these crimes. In a recent 30-year period, the United States had double the number of mass-shooting incidents than the next 24 industrialized nations combined.<sup>3</sup> Any public perception of recent increases in the number of these events is borne out by analysis of available data.<sup>4</sup> By one measure, there have been more deaths due to mass shootings in the United States in the past 18 years than in the entire 20th century.<sup>5</sup> While there is some debate about the role of mental illness in mass shootings,<sup>6–8</sup> many high-profile recent mass shootings (Aurora, CO; Roseburg, OR; San Bernadino, CA; Newtown, CT; Orlando; Las Vegas; Sutherland Springs, TX) have been characterized by the use of semiautomatic assault rifles,<sup>9</sup> leading some to advocate for restrictions on the manufacture and sale of these weapons.

While survey results indicate that researchers in criminology, law and public health rank an assault weapons ban as one of the most effective measures to prevent mass shootings, and that 67% of the US general population support such a ban,<sup>10</sup> the existing evidence on banning assault weapons is scant and sometimes contradictory. Most evidence is related to the Federal AWB of 1994, which made illegal the manufacture and use by civilians of a defined set of automatic and semiautomatic weapons and large capacity magazines. Formally known as “The Public Safety and Recreational Firearms Use Protection Act”, the AWB was part of the broader “Violent Crime Control and Law Enforcement Act of 1994. The ban lasted 10 years, expiring in 2004 when the US Congress declined to renew it.

In a study soon following the implementation of the 1994 ban, researchers reported a 55% decrease in the recovery of assault weapons by the Baltimore City Police in the first 6 months of 1995, indicating a statistically significant 29 fewer such firearms in the population.<sup>11</sup> In a 2009 study based on ICD9 external cause of injury codes for patients younger than 18 years in the United States, 11 states with assault and large-capacity magazine bans, as well as other firearm laws, were compared with 33 states without such restrictions. The incidence of firearm injuries per 1,000 total traumatic injuries was significantly lower in states with restrictive laws, 2.2 compared with 5.9.<sup>12</sup> In contrast, a comprehensive 2001 evaluation of the AWB itself concluded that there was “no evidence of reductions in multiple-victim gun homicides or multiple-gunshot wound victimizations”. The authors cautioned their results should be “interpreted cautiously” because of the short period since the ban's inception, and that future assessments were warranted.<sup>13</sup> More recent studies, while not primarily addressing the US Federal AWB have found results generally consistent with its effectiveness in preventing mass-shooting fatalities.<sup>14,15</sup>

We believe sufficient time has passed and enough data have accumulated to treat the period from 1994 to 2004 as a naturalistic pre-post observational comparison period for the association of the AWB with changes in mass-shootings in the United States. Because there is no authoritative source or registry, or even a widely agreed upon definition for these incidents, we obtained data from three open source references and restricted our analyses to only those incidents confirmed by all three sources. We assess evidence for the potential effectiveness of such a ban in preventing and controlling mass-shooting homicides in the United States. We hypothesized that the implementation of the Federal AWB contributed to a reduction in mass shooting deaths as measured by the number and rate of mass shooting fatalities before, during, and after the federal AWB.

## METHODS

Mass incident shooting data were obtained from three independent, well-documented and referenced online sources: Mother Jones Magazine, the Los Angeles Times and Stanford



University.<sup>16–18</sup> These sources have each been the basis for a number of previous studies.<sup>19–26</sup> Data from the three online open-source references were combined. Analyses were restricted to incidents reported by all three sources. Entries were further restricted to those for which four or more fatalities (not including the shooter) were reported, which meets the strictest definition of mass shootings as defined by the Federal Bureau of Investigation.<sup>27,28</sup> Yearly homicide data were obtained from the US Centers for Disease Control and Prevention Web-based Injury Statistics Query and Reporting System (WISQARS) an online database of fatal and nonfatal injury.<sup>29</sup> Because 2017 data were not yet available in the WISQARS system, data for firearm-related homicide data for that year were obtained from a separate online source.<sup>30</sup>

A variable was created to indicate the 1994 to 2004 period as the federal ban period. We attempted to identify incidents involving assault weapons. An assault weapon has been defined as semiautomatic rifle that incorporates military-style features such as pistol grips, folding stocks, and high-capacity detachable magazines.<sup>31</sup> In this study, assault weapons were identified using the text search terms “AK,” “AR,” “MCX,” “assault,” “assault,” or “semiautomatic” in a text field for weapon details. These terms were based on descriptions of the federal assault ban legislative language.<sup>32</sup> The total number of mass shooting fatalities and injuries were aggregated by year and merged with the yearly firearm homicide data.

The rate of mass shooting fatalities per 10,000 firearm homicide deaths was calculated. For the years covered by the data sources, we calculated (1) the total and yearly number of mass-shooting incidents that met the strictest criteria and were confirmed by all three sources, (2) the number of all weapon (assault and nonassault weapons) mass-shooting fatalities, and (3) the case-fatality ratio of all-weapon mass-shooting fatalities per 100 total mass-shooting fatalities and injuries. The yearly case-fatality ratio was plotted with overlying Loess line for trend and standard error limits. We also plotted the yearly rate of mass shooting fatalities per 10,000 firearm-related homicides with an overlying simple linear model with year as the predictor for (1) the total period, and (2) for preban, ban, and postban periods.

We evaluated assumptions of normality and linearity of the data using graphical methods such as density plots and Q-Q normal plots as well as summary statistics. We tested the hypothesis that the federal ban period was associated with a decrease in the number and rate of mass-shooting fatalities in the United States with a multiple linear regression model, with total homicide-based mass-shooting fatality rate as the outcome variable, a dichotomous indicator variable for the federal ban period as the predictor variable, and year as a control variable for trend over time. We calculated the relative risk of mass shooting fatalities during the federal ban period compared to nonban periods by using the “epitab” function of the R “epitools” package. This estimate is based on the ratio of the fatality rate during the ban period divided by the fatality rate during the nonban period. All results are presented with two-sided *p* values with a significance level of 0.05 and/or 95% confidence intervals (CI). We conducted subgroup analysis with data restricted to incidents in which an assault-type weapon was explicitly noted.

We conducted analyses to test the sensitivity of our results to the choice of denominator with linear regression models controlling

for trend with yearly rates based on (1) CDC WISQARS homicide data ending in 2016, (2) extrapolated CDC WISQARS homicide data for 2017, and (3) population denominator-based rates. We tested the robustness of our underlying modeling assumptions with an alternate mixed-effects generalized linear model of yearly mass shooting fatality counts with an observation-level random effect to account for overdispersion.

The study was determined to be exempt as nonidentifiable data. The study data and analytic code are available for download at <http://www.injuryepi.org/styled-2/>.

## RESULTS

The three data sources listed incidents ranging in number from 51 (LA Times) to 335 (Stanford) and in dates from 1966 (Stanford) to 2018 (LA Times). There were a total of 51 reported cases of mass shootings between 1981 and 2017 confirmed by all three sources. Forty-four of these incidents met the strictest criteria for mass shootings (4 or more killed), totaling 501 all-weapon fatalities. In total 1,460 persons were injured or killed over the 37-year period, for a total case-fatality ratio of 34.3% (95% CI, 31.9–36.8). The overall rate of mass shooting fatalities per 10,000 firearm-related homicides was 10.2 (95% CI, 9.4–11.2). There was an increase in the all-weapon yearly number of mass-shooting fatalities in the United States during the study period, (Fig. 1) and evidence of a decrease in case fatality in the post-2010 period (Fig. 2). Incidents in which weapons were characterized as assault rifles accounted for 430 or 85.8% of mass-shooting fatalities (95% CI, 82.8–88.9). Weapons characterized as assault rifles accounted for *all* mass-shooting fatalities in 15 (62.5%) of the 24 (95% CI, 42.6–78.9) years for which a mass-shooting incident was reported, accounting for a total of 230 fatalities in those years.

Between 1981 and 2017, mass shootings in the United States accounted for an increasing proportion of all firearm-related homicides, with increment in year accounting for nearly 32% of the overall variance in the data. During the years in which the AWB was in effect, this slope decreased, with an increase in the slope of yearly mass-shooting homicides in the postban period

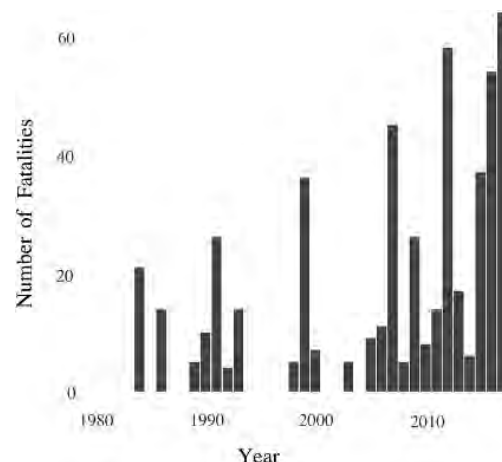
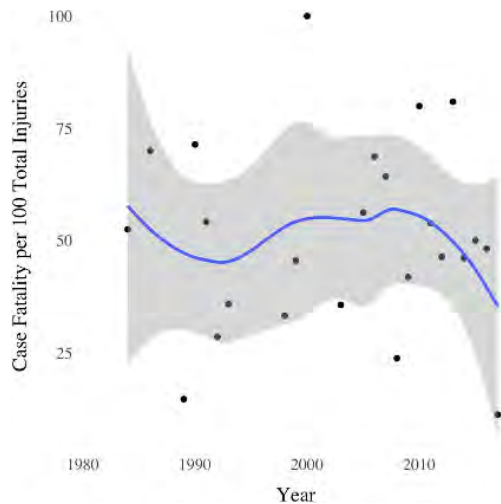


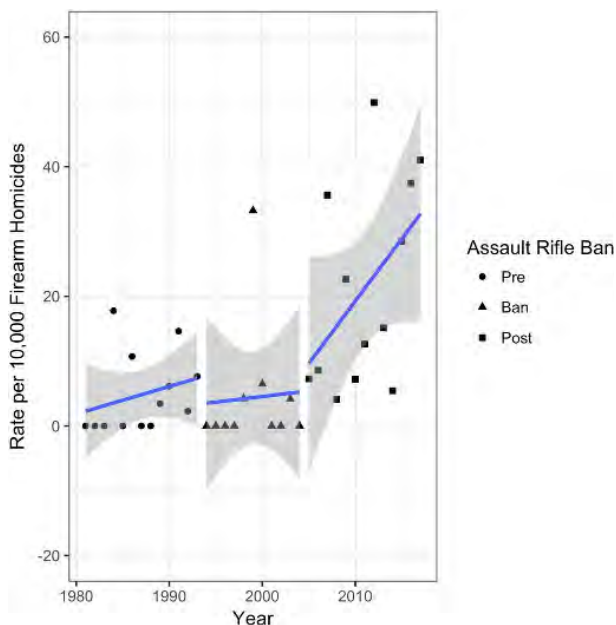
Figure 1. Mass shooting deaths. United States 1981–2017.



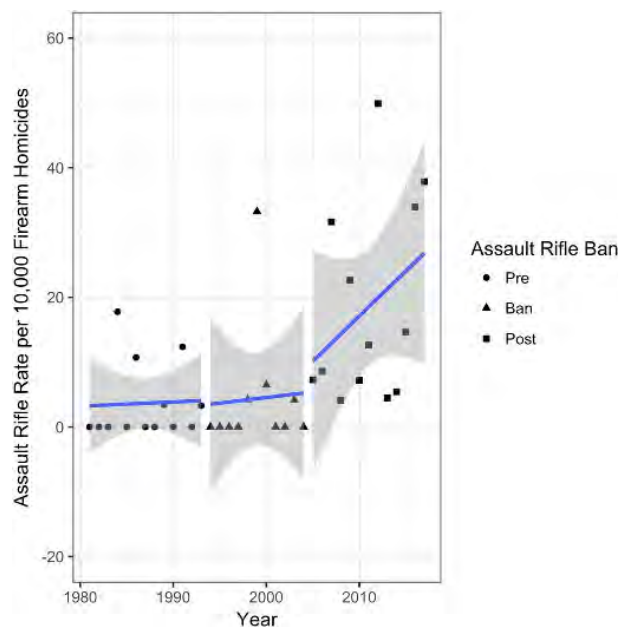
**Figure 2.** Case fatality per 100 total mass-shooting injuries with loess smoothing line for trend and standard error bounds. United States 1981–2017.

(Fig. 3). A similar pattern was evident in data restricted to those incidents characterized as involving assault weapons (Fig. 4).

In a linear regression model controlling for yearly trend, the federal ban period was associated with a statistically significant 9 fewer mass shooting–related deaths per 10,000 firearm homicides per year (Table 1). The model indicated that year and federal ban period alone accounted for nearly 40% of all the variation in the data (adjusted  $R^2 = 0.37$ ). A subanalysis



**Figure 3.** Mass shooting deaths per 10,000 firearm-related homicides with linear trends for preban, ban, and postban periods. United States 1981–2017.



**Figure 4.** Mass-shooting shooting deaths per 10,000 firearm-related homicides restricted to incidents involving assault weapons with linear trends for preban, ban, and postban periods. United States 1981–2017.

restricted to just those incidents characterized by the use of an assault weapon indicated that seven preventable deaths during the ban period were due to assault weapons alone (Table 2).

The risk of mass shooting fatalities during the federal ban period was 53 per 140,515 total firearm homicides compared with 448 per 348,528 during the nonban periods, for a risk ratio of 0.30 (95% CI, 0.22–0.39). The calculated risk ratio for the association of the federal ban period with mass-shooting fatalities as a proportion of all firearm-related homicides was 0.29 (95% CI, 0.22–0.29), indicating that mass shooting fatalities were 70% less likely to occur during the federal ban period.

The results of our sensitivity analyses were consistent with our main analyses for total mass shooting fatalities. In a linear regression analysis controlling for yearly trend and restricted to the period ending in 2016 using just CDC WISQARS homicide data as the denominator, the effect of ban period was associated with a statistically significant eight fewer mass shooting related deaths per 10,000 firearm homicides per year (coefficient for ban period, 8.0;  $p = 0.05$ ). In a similar model using extrapolated CDC WISQARS homicide data for 2017 instead of Online Gun Violence Archive data as the denominator, the effect of ban

**TABLE 1.** Linear Regression Effect of 1994–2004 Federal Assault Weapon Ban on Mass-Shooting Deaths per 10,000 Firearm Homicides, United States, 1981–2017

Variable	Estimate	Std. Error	t	p
(Intercept)	−1409.4	333.0	−4.2	0.0002
Year	0.7	0.2	4.3	0.0001
Ban Period	−8.6	3.9	−2.2	0.03



**TABLE 2.** Linear Regression Effect of 1994–2004 Federal Assault Weapon Ban on Mass-Shooting Deaths Characterized by Use of Assault Weapon per 10,000 Firearm Homicides, United States, 1981–2017

Variable	Estimate	Std. Error	<i>t</i>	<i>p</i>
(Intercept)	−1219.7	333.9	−3.7	0.0009
Year	0.6	0.2	3.7	0.0008
Ban	−6.7	3.9	−1.7	0.09

period was associated with a statistically significant 9 fewer mass shooting related deaths per 10,000 firearm homicides per year (coefficient for ban period, 8.6;  $p = 0.03$ ). A model based on the total yearly US population as the denominator, the effect of ban period was associated with a statistically significant 0.4 fewer mass shooting related deaths per 10,000,000 population (coefficient for ban period, 0.4;  $p = 0.02$ ).

The results of a mixed-effects generalized linear Poisson model of yearly mass shooting fatality counts with an observation-level random effect to account for overdispersion were very similar whether the offset variable was the number of total firearm deaths or the population size. In either case, the assault weapons ban period was associated with an approximately 85% reduction in mass shooting fatalities (Table 3).

## DISCUSSION

Recently, 75% of members of the American College of Surgeons Committee on Trauma endorsed restrictions to “civilian access to assault rifles (magazine fed, semiautomatic, i.e., AR-15),”<sup>33</sup> and 76% of the Board of Governors were in favor of a limit to “... civilian access to ammunition designed for military or law enforcement use (that is, armor piercing, large magazine capacity).”<sup>34</sup> In 2015, the American College of Surgeons joined seven of the largest most prestigious professional health organizations in the United States and the American Bar Association to call for “restricting the manufacture and sale of military-style assault weapons and large-capacity magazines for civilian use.”<sup>35</sup> This analysis adds evidence to support these recommendations.

No observational epidemiologic study can answer the question whether the 1994 US federal assault ban was causally related to preventing mass-shooting homicides. However, this study adds to the evidence by narrowly focusing our question on the potential effect of a national assault weapon ban on mass shootings as measured through the lens of case fatality. While the data are amenable to a number of additional analyses, such as stratification by location (e.g. school vs. nonschool) or by characterization of large-capacity magazines versus non large-capacity magazine, we chose to focus only on year of occurrence and total number of fatalities. In this way, we relied on the least subjective aspects of the published reports. We believe our results support the conclusion that the ban period was associated with fewer overall mass-shooting homicides. These results are also consistent with a similar study of the effect of a 1996 ban on assault type weapons in Australia after which mass-shooting fatalities dropped to zero.<sup>36</sup>

While the absolute effects of our regression analyses appears modest (7 to 9 fewer deaths per 10,000 firearm-homicides),

it must be interpreted in the context of the overall number of such fatalities, which ranges from none to 60 in any given year in our data. However, if our linear regression estimate of 9 fewer mass shooting-related deaths per 10,000 homicides is correct, an assault weapons ban would have prevented 314 of the 448 or 70% of the mass shooting deaths during the nonban periods under study. Notably, this estimate is roughly consistent with our odds ratio estimate and Poisson model results.

Our results add to the documentation that mass shooting-related homicides are indeed increasing, most rapidly in the postban period, and that these incidents are frequently associated with weapons characterized as assault rifles by the language of the 1994 AWB. We did not find an increase in the case fatality ratio of mass-shooting deaths to mass-shooting injuries. This might at first seem counterintuitive and paradoxical. The destructive effect of these weapons is unequivocal. They are engineered to cause maximum tissue damage rapidly to the greatest number of targets. However, it may be that the use of these kinds of weapons results in indiscriminate injury with additional rounds more likely to injure more people increasing the denominator in a case-fatality ratio. By contrast, the use of nonassault weapons may result in more precise targeting of victims. It is also possible that improvements in trauma care are driving down case fatality.<sup>37</sup> Also, it is worth noting that in absolute terms, there were many more fatalities outside the ban period and that survivable injury comes with its own physical, emotional, and economic costs, which have been estimated at US \$32,237 per hospital admission.<sup>38</sup>

Despite US federal funding restrictions on firearm-related research dating to 1996,<sup>39,40</sup> there is a small but growing number of analyses of mass shooting violence in the United States. Many articles have focused on the mental health aspects of these incidents,<sup>41–43</sup> or on social effects like increased firearm acquisition following mass shootings.<sup>44,45</sup> However, fewer studies have taken a strictly public health or clinical approach. Among these, an autopsy-based study of the incidence and severity of mass-shooting casualties concluded the wound patterns differed sufficiently from combat injuries to require new management strategies, indicating there is much to be learned from a systematic epidemiological perspective.<sup>46</sup> Recently, there have been calls to remove such funding restrictions from both academics and elected officials from across the political spectrum.<sup>47,48</sup>

Our choice of data and analytic approach may reasonably be debated. We chose to base our analyses on the yearly rate of mass shooting fatalities per 10,000 overall firearm homicides. This is not a population-based risk estimate, but is in fact a risk as commonly used in the epidemiologic literature which is essentially a probability statement, that is, the number of events

**TABLE 3.** Exponentiated Coefficients Generalized Linear Poisson Model

Variable	Homicide Offset		Population Offset	
	Estimate	95% CI	Estimate	95% CI
Year	0.6	0.2	3.7	0.0008
Ban	−6.7	3.9	−1.7	0.09

Effect of 1994–2004 federal assault weapon ban on mass-shooting death counts, United States, 1981–20017.

that occurred over the number of times that event could occur. It is the risk of a homicide occurring as a result of a mass shooting. It may be considered a strong assumption to build mass shooting death rates based on the overall firearm homicide rate. The demographics of most homicide victims may differ appreciably from those of mass shooting victims. We selected this approach from among a number of imperfect potential denominators, believing that basing the rates on the number of firearm-homicides partly controls for secular trends in overall homicides and firearm availability. Our sensitivity analyses indicate that our results were robust to most any choice of denominator. We chose linear regression as our primary model because it was straightforward, accessible to most readers, accounted for linear trends in the data, and returned results in the metric in which we were most interested, that is, changes in the rate of fatalities. Our comparative Poisson model results were essentially consistent with the primary model.

These analyses are subject to a number of additional limitations and caveats, primary among which is that there is no authoritative source of data on mass shooting, and any one source may be biased and incomplete. It was for this reason that we chose to combine three independent sources of data, each with its own strengths and weaknesses, and base our analyses only on those numbers that were verified by all three sources. We further restricted our analyses to only the number of fatalities and the year in which the incident occurred, and to the strictest definition of mass shootings as defined by the Federal Bureau of Investigation.<sup>27,28</sup> Even with this approach, the data remain imprecise and subject to differing definitions. We attempted to compensate for this by framing our questions as precisely as possible, following the advice of the scientist and statistician John Tukey to pursue, "... an approximate answer to the right question ... (rather) than the exact answer to the wrong question..."

In this study, we failed to falsify the hypothesis that the AWB was associated with a decrease in mass shooting fatalities in the United States. However, it is important to note that our model did not include important and potentially confounding factors like state-level and local differences in assault weapon laws following the sun downing of the federal AWB. Additional analyses including such variables and using approaches like propensity score matching and regression discontinuity<sup>49</sup> with data further aggregated to state and local levels are necessary to test the strength and consistency of our results.

Federally referenced denominator data were not available for the last year of the study. We chose to use data from the Online Gun Violence Archive to account for firearm homicide in 2017. This resource is a nonpartisan not-for-profit group founded and maintained by a retired computer systems analyst and gun advocate.<sup>50</sup> The alternative would have been to extrapolate from the CDC data, but the 15,593 firearm-related homicides reported by the Online Gun Violence Archive in 2017 was more consistent with the 14,415 reported by CDC in 2016 compared with the 11,599 predicted by an extrapolation and returned more conservative estimates of the increased rate of recent mass shootings. We note there were many years in which the number of mass-shooting fatalities is listed as zero. There were, in fact, fatalities and incidents in those years that could meet a definition of mass shooting, but they were not reported by all three sources, or did not meet the strict criteria we set for this analysis.

An assault weapon ban is not a panacea, nor do our analyses indicate that an assault weapon ban will result in fewer overall firearm-related homicides. It is important to recognize that suicides make up the majority of firearm-related deaths in the United States, accounting for 60.7% of 36,252 deaths from firearms in 2015.<sup>51</sup> However, while this is a critically important issue in its own right, suicides differ fundamentally from mass-shootings, and are unlikely to be affected by an assault weapons ban. Also, compared with the 501 mass-shooting fatalities we counted, there were 489,043 firearm-related homicides in the United States. Public health efforts should be directed at reducing all gun violence and must be multipronged, including targeted initiatives to address mental illness and reducing access to weapons in those with a propensity for violence. However, taken in the context of the increase in mass shootings in the United States, these results support the conclusion that the federal AWB of 1994 to 2004 was effective in reducing mass shooting-related homicides in the United States, and we believe our results support a re-institution of the 1994 federal assault weapons ban as a way to prevent and control mass shooting fatalities in the United States.

#### DISCLOSURE

The authors have no conflicts of interest to declare.  
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## DISCUSSION

**Ernest E. "Gene" Moore, MD** (Denver, Colorado): Thank you, Dr. Rotondo and Dr. Reilly. Can I please have the discussion video. [sounds of a gun shooting]. Well, that is the AR15 rifle. Literally, 30 potential lethal shots delivered within 10 seconds. Is this safe to have in our society?

I congratulate Dr. DiMaggio and his colleagues from NYU for their superb presentation on a very timely issue. The AAST has had a long-term interest in reducing gun violence in the United States, and has recently published our 14-point approach. Access to assault rifles is one of them. At a reductionist level, mass shootings are the net result of (1) a deranged person intending to kill random individuals in a populated area, and (2) the use of an assault rifle. Since we seem to be unable to identify



the active shooter preemptively, we are left with the alternative solution of eliminating the weapon.

The presentation today provides evidence that a federal assault weapon ban can reduce mass shootings. According to our recent national trauma surgeon surveys, three-fourths of us in the audience, including me, would like to believe the analysis; but I think we need to consider some of the potential limitations.

Many of these issues relate to the fact that research support for gun violence control in the United States remains frustratingly suppressed and fundamentally inadequate. The general lack of information, low quality of data, and need to merge data sets from diverse sources – medical, coroner, police, legal, and behavioral – compounded by scarce funding and public controversy, undermine research to inform policy and enlighten the public. The fact that you had to compare three open-access databases to be certain that the reported mass shootings occurred underscores this deficiency.

Furthermore, there is no definition of a mass shooting, although you employed perhaps the most acceptable at the moment – the FBI's definition. Could you explain for us the rationale for this definition?

You present an analysis of 44 events with four or more deaths, including the shooter, from 1981 to 2017 – a 36-year period; whereas, others suggest a much higher incidence, such as Klaveras, who reported 69 shootings of six or more over the past 27 years.

Identifying all known mass shootings per year during a study period would be useful to appreciate the overall trends, as your data somewhat understates the magnitude of mass shootings in the United States.

You employed the Gun Violence Archive to estimate homicides in 2017. Why did you not use this source for mass shootings? The Archive has reported an alarming 261 mass shootings – defined as six or more shot – thus far in 2018. Nonetheless, in the sample you studied, assault rifles accounted for greater than 85 percent of the fatalities, and this is the key issue.

You have evaluated the impact of the federal assault rifle ban by analyzing the rate of mass shootings per 10,000 firearm homicide deaths per year to adjust for confounders. This would assume that the factors influencing mass shootings are the same as those for homicides, which seems very unlikely. You have indicated that you analyzed mass-shooting fatalities per population per year; perhaps you could elaborate more about this analysis.

Another confounder as acknowledged in the presentation is the impact of individual state limitations on magazine capacity. The first state to enforce these limitations was New Jersey in 1990, and now at least eight states and Washington, D.C., have these restrictions in effect. How can we distinguish the effects of this policy? And could this be a potential bridge to ultimately reestablish a national assault rifle ban?

You have also calculated the case fatality of all weapons in mass shootings per 100 total shootings, finding a decrease since 2010. While you conjecture this may be due to indiscriminate injury from assault rifles or possibly attributed to better trauma care, I am uncertain how this is relevant to the issue of banning assault rifles. The Las Vegas shooting is a cogent example of how these data may be misleading.

Finally, there is the issue of so-called falsification that could be addressed by examining other causes of trauma mortality during this time period.

In sum, this study adds to overwhelming evidence that assault rifles are an essential component in the dramatic escalation of mass shootings in the United States. While the scientific data to support a federal ban on civilian assault rifles is imperfect due to inadequate research support, I submit collectively the existing information argues strongly for enactment of this measure, and compliment the authors for their timely contribution.

**Sheldon H. Teperman, MD** (Bronx, New York): Dr. DiMaggio, your home institution, Bellevue, plays a seminal role in the trauma center safety of our nation.

In fact, right now, your trauma medical director is not present with us, but he is at home on guard for the U.N. General Assembly. But in New York, we don't see long-gun injuries. New York has the Safe Act, and there is an assault weapons ban. So why is it so important to America's trauma center – Bellevue – that we see a national ban on assault rifles?

**Charles E. Lucas, MD** (Detroit, Michigan): Thank you for your nice presentation. How many of these incidents occurred in an inner-city environment, where most of the victims that we treat have received multiple wounds which were purposely inflicted in order to compete competitively for the distribution of heroin and other drugs? Also, how many of the assailants were African-American?

**Martin A. Croce, MD** (Memphis, Tennessee): Thank you. I want to commend the authors for an excellent study, and really, not so much to ask any questions but I rise to put out a plea to the membership that this issue is a public health problem.

This is not a right versus left problem, this is not a Second Amendment problem. This is a public health problem.

And to quote Wayne Meredith at one of the recent Board meetings, "Our primary goal is to reduce the number of bullet holes in people." So I implore the Membership to correct this dearth of research that is going on about gun violence in order to promote a public health approach, so that we can reduce the number of bullet holes in people.

**Deborah A. Kuhls, MD** (Las Vegas, Nevada): And to carry on that thought, I would urge the authors to incorporate the public health data from the CDC when it is available, because part of the methodological issues for this paper is that one data set was used for a certain period of time.

But for the last year, the CDC data was not used because it was not available, so I would urge you to not only do that analysis, but I would also urge the Journal of Trauma to consider an update to that article when that is available. Thank you.

**Charles DiMaggio, MPH, PhD** (New York, New York): Thank you very much for all these comments and questions.

Dr. Moore, so with regard to your observation about the reductionist approach to looking at this particular issue, that puts me in the mind very much of the traditional epidemiologic triad of agent, host, and environment, and if you break one link in that connection, you can break the transmission. In this case, we could call assault weapons one link, whether it's agent or host, we can decide.

With regards to the rationale for the definition, I think it's reflective of the lack of research in this area.

A case definition is an essential and critical first step in any epidemiologic investigation, and you can see that we are barely there. I think the FBI definition makes sense, I think it's the oldest one, I think it's informed by expert consensus.

And I think all the other definitions are based in some form on that, which is why we chose it. And I would urge that if we are going to be doing this research going forward, probably it would be best if we all had the consensus that that be the definition.

Why did we not use the Gun Violence Archive to estimate some of these results, and why are our numbers so much smaller than some of the other numbers? I have to agree, our numbers are very much an under-count.

We restricted our analysis to these three databases. And so the limiting factor was the one database. And I can tell you it was the LA Times – they had the fewest number. And if it wasn't in the LA Times, then the other databases didn't contribute to this data set.

We felt that the important aspect of this particular study was to demonstrate the relative effects, merits or associations with the assault weapon ban as opposed to documenting the absolute numbers.

So the Gun Archive, for example, defines mass shootings as four or more deaths or injuries. That really raises the number of deaths that can be included. We didn't include it, but I think going forward we absolutely should.

With regard to the analysis using population denominators, we agree, actually, that gun homicides are an imperfect denominator. We also felt that population was an imperfect denominator. And again, as we keep on circling around, it has to do with the data in this case.

We did feel that gun homicides captured something about gun availability and criminality in the United States, although homicides themselves differ very much from these mass shooting fatalities.

We do note that our population-based results essentially mirrored the gun homicide results, indicating that, at least for the relative effects and benefits of the assault weapons ban, the

results are robust and invariant to the choice of denominator in this case.

Can we distinguish local effects, and could this possibly be a bridge to reestablishing an assault rifle ban? The short answer is yes and yes. We can distinguish local effects.

We took a very broad approach on this particular study as a first pass on the data. But, there are data sources (and even within the data sources we used) where you can tease out local, municipal and state policies.

Also, we can link our data to other sources that have those variables. There are statistical methods available that will not only account for those variables, but also allow us to measure or estimate in some way the contribution of local or regional variation in these policies to the overall effectiveness.

The issue of the case fatality rate is very interesting and challenging. I want to note that there was a paper in JAMA on September 11th – just a couple of weeks ago – looking at mass shooter fatalities, that came essentially to the same conclusion – that there has been this recent decrease.

In our paper, in this write-up, we look at three potential explanations, and one of them is, first of all, it's just a matter of denominator. These are indiscriminate weapons.

You have someone shooting at a large group of people, and there are going to be more injuries and more casualties, and it just inflates the denominator in this case.

The second thing is, the obverse of that, is single-fire weapons, guns, are very personal weapons. They're usually characterized by someone who knows who they want to kill. And finally, we feel that perhaps there may be some improvement by the folks in this room in treating these.

I'm going to close at this point, given the time constraints.

## **EXHIBIT F**

Original Paper

# Impact of Firearm Surveillance on Gun Control Policy: Regression Discontinuity Analysis

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## Abstract

**Background:** Public mass shootings are a significant public health problem that require ongoing systematic surveillance to test and inform policies that combat gun injuries. Although there is widespread agreement that something needs to be done to stop public mass shootings, opinions on exactly which policies that entails vary, such as the prohibition of assault weapons and large-capacity magazines.

**Objective:** The aim of this study was to determine if the Federal Assault Weapons Ban (FAWB) (1994-2004) reduced the number of public mass shootings while it was in place.

**Methods:** We extracted public mass shooting surveillance data from the Violence Project that matched our inclusion criteria of 4 or more fatalities in a public space during a single event. We performed regression discontinuity analysis, taking advantage of the imposition of the FAWB, which included a prohibition on large-capacity magazines in addition to assault weapons. We estimated a regression model of the 5-year moving average number of public mass shootings per year for the period of 1966 to 2019 controlling for population growth and homicides in general, introduced regression discontinuities in the intercept and a time trend for years coincident with the federal legislation (ie, 1994-2004), and also allowed for a differential effect of the homicide rate during this period. We introduced a second set of trend and intercept discontinuities for post-FAWB years to capture the effects of termination of the policy. We used the regression results to predict what would have happened from 1995 to 2019 had there been no FAWB and also to project what would have happened from 2005 onward had it remained in place.

**Results:** The FAWB resulted in a significant decrease in public mass shootings, number of gun deaths, and number of gun injuries. We estimate that the FAWB prevented 11 public mass shootings during the decade the ban was in place. A continuation of the FAWB would have prevented 30 public mass shootings that killed 339 people and injured an additional 1139 people.

**Conclusions:** This study demonstrates the utility of public health surveillance on gun violence. Surveillance informs policy on whether a ban on assault weapons and large-capacity magazines reduces public mass shootings. As society searches for effective policies to prevent the next mass shooting, we must consider the overwhelming evidence that bans on assault weapons and/or large-capacity magazines work.

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**KEYWORDS**

firearm surveillance; assault weapons ban; large-capacity magazines; guns control policy; mass shootings; regression lines of discontinuity

**Introduction****Background**

Approximately 44,000 people are killed and an additional 100,000 people are injured by a gun each year in the United States [1,2]. Mass shooting fatalities, as a particular type of gun injury event, account for <1% of all gun deaths [3] and have largely been ignored until recently [4,5]; yet, mass shooting events occur multiple times per year [6]. This information is based on insights from firearm surveillance performed by a variety of researchers, and state and federal agencies on incidence, prevalence, risk factors, injuries, deaths, and precipitating events, similar to the surveillance of infectious diseases such as COVID-19 [7-21]. Teutch and Thacker [22] defined public health surveillance as

*the ongoing systematic collection, analysis, and interpretation of health data, essential to the planning, implementation, and evaluation of public health practice, closely integrated to the dissemination of these data to those who need to know and linked to prevention and control.*

Not only do surveillance systems generate hypotheses to test but they also provide the data to test them.

The Federal Assault Weapons Ban (FAWB, also known as the Public Safety and Recreational Firearms Use Protection Act) included a ban on the manufacture for civilian use or sale of certain semiautomatic firearms defined as assault weapons as well as certain large-capacity magazines (LCMs). The Act was in effect for 10 years from 1994 until it sunsetted in 2004. Semiautomatic weapons (rapid fire) and assault weapons (second grip plus other features) are distinct; however, the two are often incorrectly conflated as similar [23-26]. Semiautomatic weapons are defined as weapons that automatically load another cartridge into a chamber, preparing the weapon for firing, but requiring the shooter to manually release and press the trigger for each round [23-26]. By contrast, automatic weapons are similarly self-loading, but allow for a shooter to hold the trigger for continuous fire [27]. Furthermore, the FAWB also prohibited certain ammunition magazines that were defined as “large-capacity” cartridges [28] containing more than 10 bullets [29]. These LCMs can feed ammunition to semiautomatic weapons that do not meet the criteria of being considered assault weapons. Furthermore, LCMs are considered one of the most important features of the FAWB as research has found a relationship between bans on LCMs and casualty counts at the state level [30-34]. The 10-year federal ban was signed into law by President Clinton on September 13, 1994 [28].

Firearm surveillance data have been used to test potential policy responses to prevent mass shootings, including the FAWB [32,34-39], Extreme Risk Protection Orders (also known as red flag laws) [40-45], and federal and state LCM bans [31,32,46]. In particular, it seems likely that the FAWB and LCM bans have potential to affect mass shootings because they regulate

weapons and ammunition formats that are designed to enable rapid discharge, which is a key feature in mass shooting incidents [24,47]. Other types of gun deaths may not be responsive to the FAWB or LCM bans. As an example, Extreme Risk Protection Orders or “Red Flag” orders [43,48], which temporarily prohibit at-risk individuals from owning or purchasing firearms, may be effective for preventing firearm suicides or domestic violence homicides [49] but less effective for public mass shooters [50,51]. The prohibition of LCMs may have no impact on firearm suicide because suicide decedents only require one bullet to kill themselves [52].

Several studies during and after the FAWB attempted to determine if gun policy that restricts the production and sale of assault weapons and LCMs decreased gun deaths [53,54]. These initial studies make meaningful contributions to the literature because they describe what constitutes assault weapons, magazine capacity, ballistics, and loopholes in the FAWB legislation [3,53-57]. However, these studies have found little to no evidence that these policies have had any overall effect on firearm homicides, gun lethality, or overall crime [58-61]. Since deaths from public mass shootings comprise less than 1% of all homicides based on our definition, testing whether or not the FAWB/LCM ban has an impact on homicide would wash out the effect. Since the FAWB/LCM ban may be effective at specific types of gun deaths, sampling must be limited to specific types of shooters over overall gun deaths or tests for lethality [62,63]. Finally, the variation in research findings is related to differences in research design, sampling frame, and case definition of a public mass shooting [3,53-56,64,65].

Our study differs from other studies that evaluated the efficacy of the FAWB because we used economic methods and a different outcome variable. Specifically, we focused on whether the FAWB resulted in fewer public mass shooting “events,” whereas other studies evaluated the number of gun injuries and deaths that occurred during the course of a mass shooting.

**Objective**

The aim of this study was to test whether curbing *access to certain types of guns and magazines* will decrease mass shooting events. We sought to empirically answer if there was a relationship between the FAWB and a reduction in mass shooting events.

**Methods****Data Source**

We created a firearm surveillance system based on the National Institute of Justice-funded Violence Project dataset, which culled mass shooting events from 1966 to 2019 [6]. Consistent with earlier studies, we rely on the original Federal Bureau of Investigation (FBI) definition of a massacre, specifically where 4 or more people are killed within a single timeframe. We differentiate our mass shootings from others in that our inclusion criteria require the shootings to have occurred in a public setting.

We adapted this definition to only include massacres that involved gun deaths of 4 or more victims to isolate a particular type of mass shooter [66]. Many firearm surveillance systems that include mass shootings use a lower threshold of persons shot and many do not include deaths. An FBI report on active shooters in mass shooting events identified planning and preparation behaviors that are central to prevention [67]. This more narrow definition isolates premeditation, whereas broader definitions may include shooters that are more reactive [68]. Our case definition does not include family annihilators or felony killers because *familicides are defined by the victim-offender relationship, public massacres are defined by location, and felony killings are distinguished by motive* [69]. This differentiation is consistent with other mass shooting studies [70-72].

We examined the annual number of public mass shootings occurring between 1966 and 2019 that resulted in 4 or more fatalities. The hypothesis was that the FAWB reduced the number of public mass shootings per year during the period of the ban. We used regression discontinuity analysis to test the hypothesis. Regression discontinuity analysis is a standard economist tool used in policy analysis taking advantage of quasi-experimental designs [65,73].

### Analyses

Regression discontinuity analysis allows for discontinuities or shifts in both the intercept and the slope of the trend line at both the onset and sunset of the FAWB. That is, we introduced intercept shift parameters in 1995 and 2005, and trend shift parameters for the periods 1995-2004 and 2005-2019. A statistically significant shift in a parameter indicates a discontinuity (ie, a finding that the FAWB had a statistically significant effect on the number of public mass shootings). We tested for statistical significance of the intercept and trend shift parameters both independently and jointly. All statistical inference was based on a significance level set at .05. We used the Huber-White robust residuals, which attenuate problems of autocorrelation, heteroscedasticity, and some types of model misspecification [74].

We then used the estimated model for two types of counterfactual analysis. First, we used the model to predict the number of public mass shootings that would have occurred had the FAWB not been in place. The difference between this counterfactual prediction and the modeled number of incidents with the FAWB in place provided an estimate of the number of public mass shootings that the FAWB prevented.

Second, we projected forward the number of public mass shootings that would have occurred had the FAWB been permanent (ie, continued from 2004 through to the end of the sample period). We note that in some sense, this is an “out of

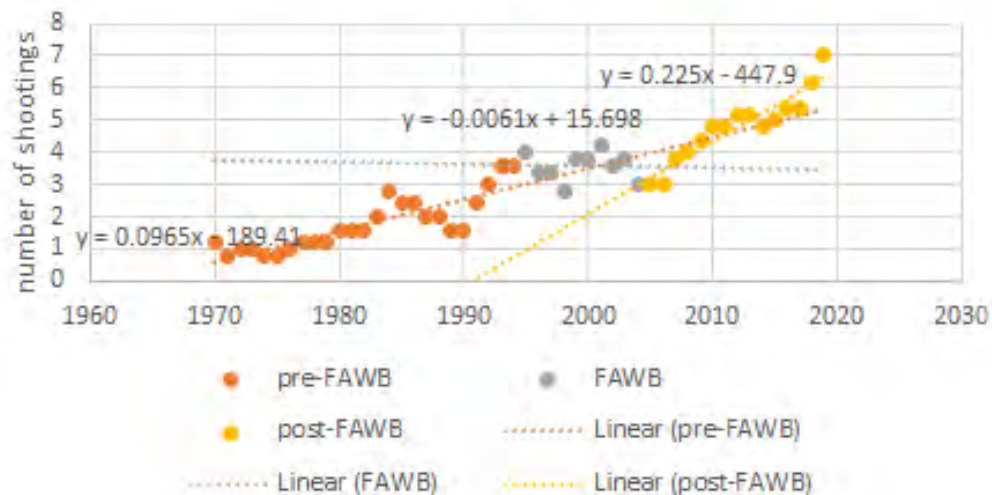
sample” exercise because even though the sample extends to 2019, the FAWB ended in 2004; thus, this exercise would not pick up events in the past 15 years that would have augmented or compromised the effects of the FAWB. The difference between the modeled number of public mass shootings and the projected counterfactual number of public mass shootings could provide an estimate of the number of public mass shootings that the FAWB prevented.

We performed a regression of the 5-year moving average of public mass shootings on the US population in millions, the homicide rate, and discontinuity variables to capture both the effects of the FAWB and its discontinuation. We did not introduce a trend line for the entire sample period because it is highly collinear with the population variable. For the period of the FAWB’s implementation, we originally introduced an intercept shift, time trend, and shift in the homicide rate; for the post-FAWB period, we introduced an intercept shift and a time trend. Due to collinearity, we retained only the trend shift in the final model for the FAWB period; for the post-FAWB period, we retained both the intercept and the trend shift.

## Results

We identified a total of 170 public mass shooting events, the primary outcome variable, with 4 or more fatalities between 1966 and 2019. The 5-year cumulative number of public mass shootings is shown in Figure 1, providing a visualization of the impacts of the FAWB on the number of shootings. The first mass shooting occurred in 1966; hence, the first data point for the cumulative number of shootings over the previous 5 years occurs in 1970. For 1966 and 1967, the cumulative number of public mass shootings was 3. This number then increased to 12 in 1993 and declined to 3 in 2004. After 2004, the cumulative number of public mass shootings increased to 81 in 2019. The last year of the ban, 2004, experienced the fewest public mass shootings through 2019.

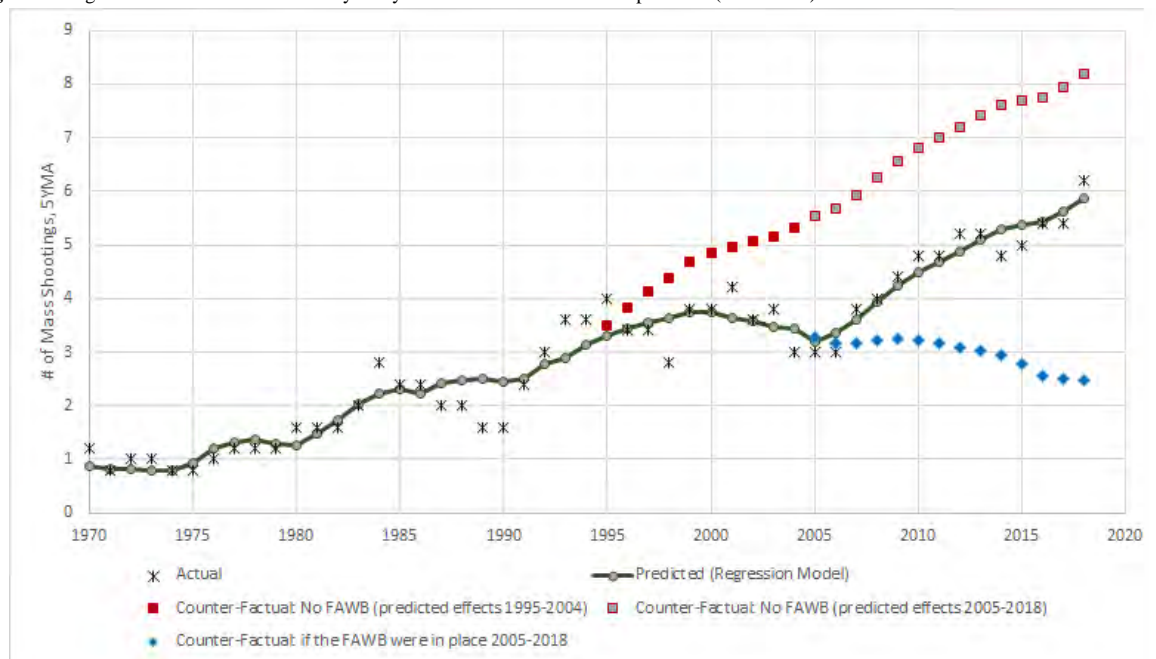
The regression results showed excellent explanatory power ( $R^2=0.94$ ). The coefficient on population was positive and statistically significant (.044,  $P<.001$ ). This coefficient means that for every increase in population of 1 million people, there are an additional .044 public mass shooting events per year. The coefficient on the homicide rate was negative and statistically significant ( $-.249$ ,  $P=.01$ ). The coefficient on the time trend for the FAWB period captures the effect of the FAWB; this coefficient was negative and statistically significant ( $-.187$ ,  $P=.001$ ). Using prediction models in combination with regression slopes, we estimate that 11 public mass shootings were avoided due to the FAWB. The intercept discontinuity for 2005-2019 was negative and statistically significant ( $-2.232$ ,  $P=.001$ ), and the trend coefficient was positive and statistically significant (.081,  $P=.001$ ).

**Figure 1.** Public mass shooting trend line using five year moving averages (1966-2019).

These results are graphed in Figure 2 in which the black stars represent the actual data and the green line represents the predicted numbers of public mass shootings from the regression discontinuity model. A bending of the trend during the FAWB period to become downward sloping at the end of the period is apparent, as is the return of the upward trajectory upon expiration of the FAWB. The red squares represent the projected numbers of public mass shootings during the FAWB period had there been no FAWB. The difference between the red squares

and the green lines represents the predicted number of public mass shootings averted by the FAWB. The model predicts that 11 public mass shootings were averted over the period of 1995-2004.

The blue diamonds represent the projected effects of a continuation of the FAWB through 2019 based on the observed trend from 1995 to 2004. This projection indicates that 30 public mass shootings would have been prevented from 2005 to 2019 had the FAWB been left in place.

**Figure 2.** Regression lines from discontinuity analysis of the federal assault weapons ban (1994-2004).

## Discussion

### Principal Findings

In total, 1225 people were killed in a mass shooting over the past 53 years with more than half occurring in the last decade, a function of increases in mass shootings and weapon lethality [62,63,75]. Public mass shooting fatalities and injuries far outpace population growth [75]. Between 1966 and 2019, the US population increased by 67% [76], whereas public mass shooting deaths increased by over 5-fold. The rise in public mass shootings throughout the sample period is in fact partially a function of population growth and homicide rate, along with the effects of the FAWB and its removal. An increase in the US population of 1 million people was associated with an increase of .040 ( $P<.005$ ) public mass shootings per year. During the post-FAWB period, the increase in population from approximately 300 million in 2005 to 330 million in 2019 should be associated with an increase of 1.2 public mass shootings per year, compared to the actual increase of 4 public mass shootings per year in the data (5-year moving average). After controlling for population growth and homicide rate, a positive and statistically significant coefficient (.081,  $P=.001$ ) on the 2005-2018 trend was seen. This further indicates a separate, nonpopulation trend of increasing violence operating during the post-FAWB period. The negative coefficient on the homicide rate invalidates the hypothesis that decreases in the numbers of public mass shootings are simply reflections of an overall decreasing homicide rate. The negative intercept discontinuity is consistent with an effect of the FAWB that persists somewhat beyond the immediate end of the ban. The positive trend coefficient is consistent with the hypothesis that the FAWB was associated with a decrease in the number of public mass shootings, as the expiration of the FAWB was associated with a shift from a downward trend to an upward trend in the number of public mass shootings per year.

The most striking finding from this study is that there was a reduction in the number of public mass shooting events while the FAWB was in place. Using prediction models in combination with regression slopes, we estimate that 11 public mass shootings were avoided due to the FAWB. By projecting what would have happened if the FAWB remained in place, we found that there would have been significantly fewer public mass shootings if the FAWB had remained in place to 2019. Remarkably, although it is intuitive that the removal of assault weapons and magazine clips will reduce the lethality of a mass shooting, we observed an inverse relationship between weapons/ammunition and mass shooting events, meaning that mass shooters may be less likely to perpetrate a mass shooting without rapid fire military-style weapons. This is an independent effect, which indirectly leads to fewer injuries and deaths. DiMaggio et al [64] also found evidence of a decrease in public mass shootings during the ban; however, their study period was shorter and was restricted to 51 public mass shootings. Unlike our study, they implicitly modeled public mass shootings as a random instance of general gun homicides that had a high death count [64]. In contrast, our findings suggest that public mass shootings are a unique type of premeditated gun violence. We found that prior to enactment of the FAWB, the rate of public

mass shootings was increasing. During enactment of the FAWB, there was a downward trend of mass shooting events. After the FAWB was lifted, public mass shootings increased dramatically. Firearm homicides in general follow no such patterns.

This effect was not found in the work of Koper, Roth, and colleagues [53-55]; however, their inclusion of all gun homicides masks the ban's effect on mass shootings. Even though Peterson and Densley's [77] work focused on perpetrator histories and not the FAWB, their findings that ease of gun access is characteristic of public mass shooters further supports our study. We restricted the inclusion criteria to public mass shootings to specifically test the effectiveness of the FAWB on public mass shooting events.

Regardless of the FAWB, bringing a semiautomatic rifle with high magazine capacity to a massacre significantly increases the number of fatalities and injuries. The increase in deaths is a function of rapid fire and increased ballistic energy. The increase in injuries is also a function of rapid fire and high-capacity magazines, enabling the shooter to shoot more people in crowded venues quickly before the crowd can disperse or hide. When controlling for the FAWB, the use of assault rifles decreased by half during implementation of the ban and tripled after the ban was lifted. This is a particularly important finding given that the FAWB had loopholes and that overall violent crime is decreasing [78]. First, all people with an assault weapon prior to the FAWB were allowed to retain their semiautomatic weapons [54,64]. Second, without a buyback program, semiautomatic weapons remained in the community [54,64]. Third, the ban did not target some military assault-like weapons [54,64]. Finally, a major loophole found in gun control legislation is that buyers can bypass background checks by purchasing their weapons and ammunition from gun shows, through illegal purchasing, or legally purchasing their guns and ammunition from another gun owner [57,63,79-87]. Even with these loopholes and issues, there was still a significant reduction in public mass shootings during the FAWB. These loopholes indicate that most people who purchase assault weapons do not become mass shooters; however, mass shooters require assault weapons and LCMs to carry out a mass shooting. Ban effectiveness might have improved if all assault weapons were included in the FAWB.

Some recent studies have specifically analyzed the effects of LCM bans on the incidence of public mass shootings. In a review of state legislation, Webster et al [88] found that bans of LCMs were associated with a significant reduction in the incidence of fatal public mass shootings. This study shows that the FAWB, which included a ban on LCMs, was associated with fewer fatalities and injuries during mass shootings in addition to fewer public mass shooting events. Koper et al [27] previously reported that 19% of public mass shootings resulting in 4 or more fatalities included the use of LCMs, while only 10% involved an assault weapon. Klarevas et al [29] found a similar pattern in shootings of 6 or more people, in which 67% of shooters utilized LCMs, whereas only 26% utilized an assault weapon. Because our study only looked at effects of the FAWB, which included an LCM ban, we were only able to determine the combined effects of limiting assault weapons and LCMs. To be clear, the reduction in the number of public mass



shootings, and resulting fatalities and injuries, may be a function of the ban on assault weapons, assault weapons plus LCMs, or only LCMs. We cannot separate out their independent effects at the national level.

Unlike our study, Webster et al [88] did not evaluate the incidence of assault weapons used in public mass shootings. Rather, they focused on fatalities from public mass shootings vs public mass shooting events. Although Webster et al [88] utilized the FBI Supplemental Homicide Report as their dataset, which is a voluntary reporting measurement system prone to errors in reporting, their findings are applicable to our analysis.

### Limitations

Although we found statistically significant decreases during the FAWB, we cannot isolate aspects of the policy that are attributed to the decline. Most notably, the FAWB also included LCMs during the ban. It may be that the type of gun and/or the type of magazine resulted in a decline. Indeed, assault weapons and LCMs provide the means to carry out a mass shooting; however, there are likely other factors beyond this study that partially explain the radical increase in public mass shootings in the post-FAWB period. For example, the FAWB was in place from 1994 to 2004, which is the same time period that the US population largely adopted the internet, along with associated social communication software and websites. This may have

resulted in better tracking of public mass shootings or increased media coverage. Because our study specifically targeted the federal legislation, we omitted state-level gun policies such as state-level prohibitions on certain types of guns, LCMs, or more lethal types of bullets. It is likely that the internet serves as a contagion and as a guide to potential mass shooters, allowing them to access weapons and multiple stories about other mass shooters [62,67,89,90].

### Conclusions

In summary, public mass shootings are a unique and specific type of homicide by a gun. We found evidence that public mass shootings are qualitatively different from general homicides because after the FAWB expired, mass shooting events increased while general homicides decreased. The increase in public mass shootings was more dramatic in the final 10 years of the study period following the end of the FAWB. We suspect that these outcomes may be improved by removing existing semiautomatic weapons with large bullet capacity by creating a buyback program for all rapid-firing weapons. Moreover, the legislation would be strengthened if it closed loopholes that allow gun buyers to get around the background check legislation and other purchase prohibitions by exempting gun shows and internet or person-to-person purchases, which were exempted from the FAWB and LCM ban [87].

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### Conflicts of Interest

None declared.

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## **EXHIBIT G**

## VIEWPOINT

## Regulating Assault Weapons and Large-Capacity Magazines for Ammunition

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Viewpoint pages 1177,  
1179, 1181, 1183, 1185,  
1187, 1189, 1193, 1195,  
and 1197 and Editorial  
page 1201



Supplemental  
content

**Mass public shootings in the US** account for a small fraction of all firearm-related homicides, but have an outsized role in stoking the public's concern with firearm violence. The vivid instances of attacks on people in churches, schools, and offices and at other public gathering places do vastly disproportionate damage to peace of mind by creating a sense of peril in places that should feel safe. These attacks have been increasing in frequency and deadliness in recent years. As reducing this particular type of firearm violence becomes more urgent, the case for a variety of prevention measures becomes even stronger.

This Viewpoint focuses on a measure that is highly specific to the gun violence problem—stringent regulation of assault weapons and large-capacity magazines (LCMs) for ammunition. Federal law banned the introduction of new LCMs and military-style semiautomatic firearms between 1994 and 2004, but that regulation ended in 2004 and Congress did not renew it. Now, years later, the nation is experiencing the dire effects of opening the door to the manufacture and import of these weapons; it is time to close that door.

#### History and Current Status of Bans

The history of federal bans on weapons of mass destruction goes back to the 1934 National Firearms Act. Among other provisions, the Act required submachine guns and other firearms capable of fully

Current estimates suggest that approximately 20 million assault weapons are owned by private individuals in the US, with millions of new assault weapons manufactured and imported each year.

automatic fire (ie, firing several shots with a single pull of the trigger) to be registered with the federal government.<sup>1</sup> All transactions involving such weapons were taxed at \$200, a high confiscatory amount at the time. The registration and tax requirement remained in place, although inflation has substantially undercut the force of the transfer fee. The Act was expanded by Congress in 1986 to end the sale of new fully automatic weapons. There is every reason to believe that these restrictions have been effective. Even though the Thompson submachine gun was a notorious gangster weapon in the 1920s, fully automatic weapons of any kind are rarely used in crime in modern times or in mass public shootings.<sup>1</sup>

The 1994 Federal Assault Weapons Ban extended the regulation of military-style weapons to include some semi-automatic firearms. These weapons fire 1 round of ammunition for each pull of the trigger, and are capable of firing at a rate of roughly 1 per second. The 1994 Assault Weapons Ban ended the legal manufacture and import of specified firearms, as well as ammunition-feeding devices (magazines) that held more than 10 rounds of ammunition. At the time, most prohibited assault weapons were equipped with detachable magazines that held 30 rounds and could accept magazines that could hold as many as 50 or 100 rounds, thus making it possible to fire dozens of rounds without pausing to reload.<sup>2</sup>

The 1994 federal ban on new assault weapons had gaping loopholes. First, the federal ban did not restrict possession or transactions of existing assault weapons and LCMs. Second, manufacturers found ways to slightly modify the design of some of the banned weapons so that they met the letter of the law while preserving the military appearance and the possibility of accepting LCMs and firing high-powered ammunition quickly. Still, there is evidence that the ban had some salutary effect on mass public shootings.

The LCM ban, also in effect during 1994 to 2004, was not subject to the redesign problem because it provided a bright line that was difficult for manufacturers to overcome. There were, however, an estimated 25 million LCMs in circulation when the ban was enacted, and those remained in circulation, but with no new additions.<sup>2</sup> It was not just assault weapons (as defined) that were designed to use LCMs, but a variety of other semiautomatic firearms as well, so the LCM ban had much broader scope.

When the law expired in 2004, manufacturing and importations of LCMs and previously banned weapons resumed, and a surge of sales followed.

Current estimates suggest that approximately 20 million assault weapons are owned by private individuals in the US, with millions of new assault weapons manufactured and imported each year.<sup>3</sup> The industry initially advertised these weapons as "assault rifles," and continues to promote them with military allusions but has now rebranded this type of weapon as the "modern sporting rifle."

Seven states have some version of a ban or stringent restrictions on assault weapons: California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, and New York, as well as the District of Columbia.<sup>4</sup> These laws are being challenged in the courts as a violation of the Second Amendment, but have survived these challenges to date.

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1191

Opinion Viewpoint

**Evidence of Potential Effectiveness of a National Ban**

A review conducted by the RAND Corporation concluded that the handful of published studies on the effect of the ban on mass public shootings was “inconclusive” due in part to flaws in the analysis used by the 3 studies with positive findings.<sup>4</sup> But it is unlikely the surge in mass public shootings that involved assault weapons and LCMs that occurred after the ban would have happened if the ban had remained in place. The logic is straightforward. The sales of these weapons, which had declined during the ban, expanded greatly following its repeal, making them more widely available to everyone including would-be mass murderers.

To document recent trends in such mass public shootings requires a precise definition. One common definition for mass public shootings has several elements,<sup>5,6</sup> including: (1) a minimum of 4 homicides; (2) a public location; and (3) circumstance not attributable to robbery, other felonious activity, or commonplace conflict in families or among acquaintances. A comprehensive compilation of such events is the Violence Project’s database of mass shootings in the US,<sup>7</sup> which includes the number of people killed and injured in each event and the type of weapon or weapons used.

Information from this database indicates that in the years following when the law expired in 2004, the number of mass shooting incidents greatly increased and the number of fatalities increased even more. During the period from 2015 to 2019, the number of incidents reached 33 (or 6.6 per year), which was almost twice the number during the decade the Federal Assault Weapons Ban was in effect (eFigure and eTable in the Supplement). The number of fatalities from shootings that involved banned weapons decreased during the second half of the ban (2000-2004) and then surged during subsequent periods, reaching a total of 271 during 2015 to 2019. It was during that 5-year interval from 2015 to 2019 that 5 of the top-10 deadliest mass public shootings in US history occurred, and all were committed with assault weapons.<sup>8</sup> The number of fatalities resulting from mass public shootings with other weapons has remained relatively flat.

**The Australian Ban on Rapid-Fire Weapons**

The Australian experience has factored into the debate over reinstating the assault weapons ban in the US. In Australia, the impetus for banning semiautomatic weapons was a 1996 mass public shoot-

ing in Port Arthur, Tasmania, in which a young man killed 35 people with a semiautomatic rifle. Swift action by the federal and state legislatures produced legislation that banned not only manufacture and import, but private possession of semiautomatic rifles. To ease the transition, a series of firearm buybacks were instituted, and 1 million weapons were ultimately relinquished, estimated to be one-third of all privately owned guns. Australia had 11 mass shootings during the decade prior to the ban,<sup>9</sup> and 1 since then (a family killing in 2018 that would not count as a mass public shooting by the US definition).

The Australian experience is illustrative as a proof of concept for other countries, including the US. Of note, the ban covered all semiautomatic rifles, not just those with the specific features suggestive of use in warfare as opposed to hunting. The ban on possession of existing guns rather than only on the introduction of new guns greatly accelerated its apparent effectiveness.

**Potential Next Steps**

On July 29, 2022, the US House of Representatives passed the Assault Weapons Ban of 2022. To a large extent this bill reinstituted the 1994 ban, including the ban on the sale of new semiautomatic firearms deemed to be assault weapons, and of new LCMs holding more than 10 rounds. An important innovation is that for LCMs, the bill only allows continued possession and use of existing devices, but not transfer. However, given the reality that the US Senate will not enact this bill, it is useful to consider other approaches.

States could institute or expand assault weapon bans. Indeed, just a ban on LCMs would be a promising first step, impeding access to these products by individuals who could otherwise use them to fire multiple rounds of ammunition at large numbers of people before law enforcement can be mobilized to stop the killing.

**Conclusions**

In 2017, the *New York Times* polled “32 current or retired academics in criminology, public health and law, who have published extensively in peer-reviewed academic journals on gun policy”<sup>10</sup> to ask them what measures would be most effective in dealing with the mass shooting problem in the US, and an assault weapons ban was deemed overall by this panel to be the single most effective measure. The evidence in support of a ban has grown tragically stronger since then.<sup>10</sup>

**ARTICLE INFORMATION**

**Conflict of Interest Disclosures:** Dr Donohue reported serving as an expert witness for various government entities on matters related to assault weapons bans based on his research in this area.

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## Abbreviations

**FAWB:** Federal Assault Weapons Ban  
**FBI:** Federal Bureau of Investigation  
**LCM:** large-capacity magazine

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## **EXHIBIT H**



# Gun Digest

**34th Anniversary  
1980 Deluxe Edition**

**Includes 16 Pages in Full Color**



**THE WORLD'S  
GREATEST GUN BOOK**

**ALL NEW:**

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- Field Tests and Evaluations by Shooters
- History and Analysis for Students of the Gun

**PLUS:**

The most comprehensive catalog of firearms and accessories available to shooters.

**Edited by Ken Warner**  
John T. Amber, Editor Emeritus



# THE COMPLETE COMPACT CATALOG

It is problematical whether people mostly buy GUN DIGEST for its remarkable catalog or for its feature section designed to be good reading. Certainly, people use the catalog pages of GUN DIGEST more. A copy of this book is to be found within reach of virtually every sales executive and store owner in the firearms industry, and it is certainly a mainstay for gunwriters and editors. Our catalog section is the big question-answerer.

Inflation has brought, to a degree, hard times to those who prepare catalogs that show prices. There was a time when we went to all the shows and made all the phone calls and got, in addition to all the details, the year's prices. Indeed, in the old days as far back as GUN DIGEST goes, there were times when the prices didn't change from year to year.

That is all gone. Inflation has made it virtually impossible for even factory people to keep track of prices. A publication which must be early, as this one is, can only print those prices in effect at the time it goes to press. Those are the prices you see here. At the very least, they provide an absolutely sound starting point for shoppers.

Showing prices is not, however, the principal function of the GUN DIGEST catalog section. Its all-inclusive nature provides, if you look at a lot of them, a history of firearms availability in the United States. It covers virtually all firearms available to U.S. shooters, whether manufactured in the United States or elsewhere, or marketed by United States firms or others, and whether the arm is rimfire, centerfire, muzzleloader, rifle, handgun, shotgun. Indeed, air arms have always been—since they became a factor—listed in GUN DIGEST.

There are things besides guns important to firearms users and those have always been listed in the GUN DIGEST catalog. Sights and accessories, scopes and mounts, books, addresses of associations and clubs and manufacturers—all these are important and sometimes imperative reference needs of gun users.

It is important to note that GUN DIGEST is a commercial venture by itself. It makes its money from its readers and it makes no money through advertising. No one pays to be listed in GUN DIGEST; any legitimate producer of any legitimate product or service who will meet our deadlines regarding essential details and photographs, will be listed. In fact, if they don't meet our deadlines, we go after them. And if that fails, we will present what we can find out without them.

Here it is, then: 180 pages of pure objective fact—what's available, who makes it, where it is, what it looks like, and, within limits imposed from without, how much it costs. There is no other source that presents this information with such completeness and in such compact convenience.

Making it happen is, by the way, hard work.

*Kw*



Harold A. Murtz, Senior Staff Editor, handles the GUN DIGEST catalog and edits GUNS ILLUSTRATED each year.



This trio— Bob Anderson, Lilo Anderson, Harold A. Murtz— hold down the Northfield editorial offices



Pamela J. Johnson, DBI artist, finds a table full of Digest layouts each spring.

## **EXHIBIT 11**

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*official capacity as Attorney General of the*  
8 *State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 17-cv-1017-BEN-JLB

**DECLARATION OF BRENNAN RIVAS**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                                   **DECLARATION OF BRENNAN RIVAS**

2           I, Brennan Rivas, declare under penalty of perjury that the following is true  
3 and correct:

4           1.     I have been retained by the State of California to provide expert  
5 opinion and testimony regarding historical regulations that prohibited the public  
6 carry and possession of certain weapons. I am being compensated at a rate of \$130  
7 per hour.

8           2.     I have evaluated the historical justifications and purposes of laws  
9 restricting the carrying of certain weapons, in addition to their scope in restricting  
10 the use of certain weapons associated with urgent societal problems of the time  
11 while simultaneously protecting the right to use other weapons for constitutionally  
12 protected, lawful purposes.

13                                   **BACKGROUND AND QUALIFICATIONS**

14           3.     I have a Ph.D. in history from Texas Christian University, awarded in  
15 2019. My expertise includes historical weapon regulations in the United States. I  
16 have several publications on this topic, including peer-reviewed articles in the  
17 *Southwestern Historical Quarterly*, and a chapter in an edited collection  
18 forthcoming by Oxford University Press; earlier this year, my article, “Enforcement  
19 of Public Carry Restrictions: Texas as a Case Study (June 2022), was published in  
20 the *UC Davis Law Review*.

21           4.     I am currently completing a book manuscript, based upon my  
22 dissertation research, which traces the development and implementation of weapon  
23 and firearm policies in Texas across a century-long period.

24           5.     I have provided expert witness testimony in *Miller v. Bonta*, No. 3:19-  
25 cv-01537-BEN-JLB (S.D. Cal.).

26           6.     A true and correct copy of my current curriculum vitae is attached as  
27 **Exhibit A** to this declaration.

## OPINIONS

7. As discussed in this declaration, the proliferation of 19<sup>th</sup> century firearm restrictions, including those enacted in Texas, Tennessee, and Arkansas, demonstrate a robust governmental response to the scourge of gun violence that swept the Nation. Importantly, these restrictions did not flatly ban the carry or possession of all arms, and instead targeted only those weapons that posed significant risk to public safety at that time.

### **I. BRIEF HISTORY OF THE COLT REVOLVER AND THE SPREAD OF HANDGUN VIOLENCE IN THE 19<sup>TH</sup> CENTURY**

8. The field of gun law history is a relatively young and obscure one, though it will undoubtedly continue to grow as Second Amendment jurisprudence generates a need for more and better scholarship on the subject. My research, which represents some of the most in-depth work on nineteenth-century gun regulations, shows that there are historical firearm regulations similar to both California's restrictions on large-capacity magazines and its restrictions on assault weapons. Notably, during this period, several states prohibited the sale, gift, transfer, or importation of certain types of revolvers and other pistols which people of the time associated with criminal activity.

9. The revolver design that came to dominate American markets during the mid- and late nineteenth century was patented by Samuel Colt in 1836. He was not the first inventor to produce a multi-shot pistol, but he was the first whose creation became technologically and socially significant. Even though Colt had a working revolver by the mid-1830s, it took decades for his invention to become commercially successful.

10. The Colt revolver diverged from pistols then widely available in two critical ways. First, it was breech-loading, meaning that ammunition did not need to be inserted through the end of the barrel (muzzle-loading). Second, it provided multiple shots without reloading; the standard design eventually settled at six



1 rounds. The earliest revolvers (those manufactured prior to and during the Civil  
2 War) were of the “cap and ball” type, which required a delicate and time-  
3 consuming reloading process. By about the 1870s, technological developments in  
4 the design and functionality of ammunition meant that later models of Colt’s could  
5 use individual cartridges; these could be inserted fairly quickly into the cylinder,  
6 which made the reloading process much more swift—a boon on the battlefield, but  
7 a new danger in other contexts.

8 11. Though Colt’s revolver was a revolutionary device that represented a  
9 paradigmatic shift in firearm technology, his company struggled to reach its  
10 potential. The expiration of Colt’s patent in 1857 opened the door for other  
11 manufacturers to enter the market without having to endure the same decades-long  
12 startup cost. Meanwhile, the growing crisis over slavery and its looming prospect  
13 of war gave Colt what he had always wanted—substantial government patronage.  
14 Southern states ordered as many revolvers as they could in the lead-up to Fort  
15 Sumter, and Colt’s Patent Fire Arms Manufacturing Company was more than  
16 willing to deliver. But the far more important contracts came from the United  
17 States military, whose orders for pistols like Colt’s revolver skyrocketed during the  
18 course of the Civil War.<sup>1</sup> Wartime production by Colt, in addition to the new  
19 entrants into the market (like Smith & Wesson), created an unprecedented  
20 infrastructure to manufacture staggeringly large quantities of pistols. As production  
21 capacity increased and the U.S. military demobilized, more of these weapons  
22 became available to and affordable for American consumers; by the 1870s, the net  
23 result was more and cheaper pistols spread throughout the country<sup>2</sup>, introducing the  
24 United States to its first experience with rampant gun violence.

25 <sup>1</sup> On the life of Samuel Colt and the history of his firearm manufacturing  
26 companies, see Jim Rasenberger, *Revolver: Sam Colt and the Six-Shooter that*  
27 *Changed America* (New York: Scribner, 2020).

28 <sup>2</sup> Colt’s Army revolvers cost about \$20 at the time of the Civil War, but  
(continued...)

1           12. The Civil War Era, making up the central three decades of the  
2 nineteenth century (1840-1870), marked a sharp departure for the United States in  
3 terms of violence and homicide in comparison to other Western nations. Distrust in  
4 governing institutions and tremendous economic change wrought by  
5 industrialization primed Americans for homicidal violence to a degree that was  
6 unprecedented in American history. In northern cities, rising population levels  
7 accompanied urbanization, labor agitation, and poverty, which caused an increase  
8 in homicide and crime. Though military victory and a renewed faith in American  
9 government reduced homicide in northern states after the 1860s, the rates for the  
10 1870s and 1880s in the north remained higher than those from the more peaceful  
11 era prior to the 1840s, and by the close of the 1890s northern homicide rates began  
12 ratcheting upward yet again.<sup>3</sup> Broader crime rates for the late nineteenth century  
13 are harder to pin down than those for homicide, but the development of urban,  
14 industrial life produced abundant opportunities for the criminally inclined. That  
15 city governments enacted new criminal ordinances and increased funding for police  
16 strongly suggests that urban residents perceived themselves to be more vulnerable  
17 to victimization than they had been in the past. In the southern states, the  
18 subsequent entrants into the market sold small pocket pistols for as little as a couple  
19 of dollars. For example, see digitized Sears and Roebuck catalog (1898), pp. 365-  
20 367. Regardless of caliber, the pistols from Colt's ran about \$12 to \$13 in the  
21 catalog but retailed elsewhere for something closer to \$18 (see pp. 367).  
22 Meanwhile, the smaller caliber pocket pistols from other brands could be ordered  
23 for as little as \$1.40 (see pp. 365). For the 1898 Sears & Roebuck catalog online,  
24 see <https://bit.ly/3VeUhHo>.

25           <sup>3</sup> On homicide in American history, particularly as broken down into  
26 northern and southern regions, see Randolph Roth, *American Homicide*  
27 (Cambridge: Belknap Press of Harvard University Press, 2009), 297-326, 386-388  
28 (for trends in northern areas); 185 (for data-supported charts showing trends in  
homicide for large cities across the entire nineteenth century); 184 (complicating  
data from pp. 185 by showing that some rural northern areas experienced sharp rise  
in crime after 1865 and therefore emulated what took place in the American South  
during that time).



1 revolutionary consequences of emancipation and Reconstruction created an  
2 atmosphere of distrust of government and one's neighbor, mutual hatred, and  
3 deeply ideological partisanship that resulted in tremendous, gut-wrenching violence  
4 suffered primarily by Black Americans and their political allies. The disruption of  
5 war, occupation, and frequent changes in state government and constitutional  
6 structure bred attitudes of vigilantism and disregard for the judicial process. Rates  
7 of violence and homicide remained quite high in the southern states across the  
8 nineteenth century.<sup>4</sup> The proliferation of deadly weapons, and especially easily  
9 concealable pistols, to a point of near ubiquity in American communities rendered  
10 the interpersonal conflicts that erupted as a result of urbanization, Reconstruction,  
11 economic hardship, and social dislocation all the more deadly.

## 12 **II. GOVERNMENTAL RESPONSES TO THE RISE IN HANDGUN VIOLENCE**

13 13. The response to this gun violence varied across the United States. The  
14 most popular approach was the enactment or strengthening of public carry laws.  
15 Jurisdictions that did not already have such laws were likely to enact them, and  
16 those using the older mechanism of sureties to keep the peace were likely to  
17 transition toward the implementation of criminal statutes mandating fines and/or  
18 jail time for violators.<sup>5</sup> These public carry regulations targeted concealable items  
19 like pistols, sword canes, and daggers that were used in the commission of crimes  
20 and generally referred to as deadly weapons. The closing third of the nineteenth  
21 century saw a flurry of this activity as states and municipalities tried new penalties,  
22  
23

24 \_\_\_\_\_  
25 <sup>4</sup> Roth, *American Homicide*, 411-434.

26 <sup>5</sup> The Repository of Historical Gun Laws, a database maintained by the Duke  
27 Center for Firearms Law, reflects that American state and local governments  
28 enacted statutes and ordinances specifically relating to "carrying weapons" in large  
numbers during the period from the close of the Civil War in 1865 through the end  
of the nineteenth century. See <https://firearmslaw.duke.edu/repository/search-the-repository/>.

1 added new weapons to the lists of prohibited weapons, and generally attempted to  
2 eliminate small, easily concealable weapons from the public sphere.<sup>6</sup>

3 14. Another strategy employed by state governments to reduce gun  
4 violence and gun crime was to tax certain types of firearms. In 1894, Georgia  
5 enacted a new occupation tax law that applied to “dealers in pistols and other  
6 weapons.” A dealer in “pistols, toy pistols shooting cartridges, pistol or rifle  
7 cartridges, dirks, bowie-knives, or metal knucks” had to pay twenty-five dollars per  
8 place of business.<sup>7</sup> In 1907, the Texas legislature placed a fifty-percent sales tax  
9 upon pistols; dealers had to report their sales and pay the required tax to the state  
10 comptroller’s office on a quarterly basis.<sup>8</sup> Sales and occupation taxes like these  
11 tended to be less about generating revenue than regulating an activity that was  
12 frowned upon by society more generally. Occupation tax laws applied to vendors  
13 who appealed to vices like smoking, gambling, and playing games as well as  
14 peddlers and itinerant salesmen. When a Texas appellate court upheld the stringent  
15 sales tax (over loud complaints by dealers), the judge described the business of  
16 selling pistols as one “hurtful to the welfare of society” and among that class of  
17 occupations “detrimental to the health, morals, or good order of society.” As a  
18 result, the court reasoned that the legislature “would have the right, not only to levy

19  
20 <sup>6</sup> In the second half of the nineteenth century, items like metal knuckles and  
21 razor blades became targets for proscription alongside bowie knives, pistols, and  
sword canes.

22 <sup>7</sup> Acts of the General Assembly of the State of Georgia (1894) available  
23 online from the Digital Library of Georgia; see  
24 [https://dlg.usg.edu/record/dlg\\_zlgl\\_75343012/fulltext.text](https://dlg.usg.edu/record/dlg_zlgl_75343012/fulltext.text) and  
25 [https://dlg.usg.edu/collection/dlg\\_zlgl?range%5Byear\\_facet%5D%5Bbegin%5D=1880&range%5Byear\\_facet%5D%5Bend%5D=1899&sort=year+desc](https://dlg.usg.edu/collection/dlg_zlgl?range%5Byear_facet%5D%5Bbegin%5D=1880&range%5Byear_facet%5D%5Bend%5D=1899&sort=year+desc). Also, there  
26 were likely many more occupation taxes, though they have not been  
comprehensively indexed as of yet.

27 <sup>8</sup> An Act providing for the levy and collection of an occupation tax . . . ,  
28 General Laws of Texas, §XVIII (1907). See also Brennan Gardner Rivas, “The  
Deadly Weapon Laws of Texas: Regulating Guns, Knives, and Knuckles in the  
Lone Star State, 1836-1930, (PhD diss., Texas Christian University, 2019) 161-162.

1 an excessive tax, which would be prohibitory thereof, but could go further and  
2 absolutely prohibit any one from engaging therein.”<sup>9</sup>

3 15. Arkansas and Tennessee, for example, adopted a two-pronged  
4 approach that displayed attributes of both public carry laws as well as dealer  
5 regulations. The first prong was to prohibit the public carrying of pistols.<sup>10</sup> Courts  
6 in both states struck down early versions of the laws because they applied to all  
7 revolvers, including those being issued to certain classes of soldiers by the United  
8 States military.<sup>11</sup> But they were quickly amended to exclude “army and navy  
9 pistols”—those types or models in use by the US military—when carried openly in  
10 the hand. By exempting these models, Arkansas and Tennessee lawmakers made  
11 their gun policies comport with the reigning Second Amendment jurisprudence of  
12 their day, which held that militia arms enjoyed special protection from certain  
13 forms of regulation.

14 16. Unlike today, where laws generally prevent the civilian sale of  
15 military-grade weapons while carving out protections for self-defense weapons,  
16 Americans of the nineteenth century did just the opposite; case law at that time held  
17 that a citizen’s militia obligation conferred upon certain kinds of firearms,  
18 especially muskets and rifles, a protected status under the law as “militia arms,”  
19 while those smaller weapons which lent themselves to concealability and were  
20 more conducive to interpersonal violence could be prohibited. This view of arms  
21 and their place in society changed in the twentieth century as a result of substantial  
22

23  
24 <sup>9</sup> *Caswell & Smith v. State*, 148 SW 1159 (Tex. App. 1912).

25 <sup>10</sup> See 1869-1870 Tenn. Pub. Acts, 2d. Sess., An Act to Preserve the Peace  
26 and Prevent Homicide, ch. 13, § 1; 1874-1875 Acts of Ark., An Act to Prohibit the  
27 Carrying of Side-Arms, and Other Deadly Weapons, at p. 155, § 1.

28 <sup>11</sup> *Andrews v. State*, 50 Tenn. 165 (1871); *Wilson v. State*, 33 Ark. 557  
(1878).

1 alterations to the militia system (and the development of the National Guard) as  
2 well as the advent of automatic and select-fire weapons for military use.

3 17. When the Tennessee high court struck down the initial statute, which  
4 prohibited the carrying of *all* pistols, lawmakers swiftly wrote a replacement statute  
5 that, “it shall not be lawful for any person to publicly carry a dirk, sword cane,  
6 Spanish stiletto, belt or pocket pistol, or revolver, other than an army pistol, or such  
7 as are commonly carried and used in the United States army, and in no case shall it  
8 be lawful for any person to carry such army pistol publicly or privately about his  
9 person in any other manner than openly in his hands.”<sup>12</sup> It is worth noting that even  
10 the exempted army/navy pistols could not be carried concealed, or even visible  
11 within a waistband or hip holster; the only way to carry legally exempted pistols  
12 was to hold them in one’s hand. The purpose of this additional phrase was to  
13 curtail as much as possible the carrying of these weapons in public spaces so that a  
14 person would only do so in the event of a real emergency. Arkansas’s replacement  
15 statute was similar to that of Tennessee.<sup>13</sup> The Tennessee Supreme Court upheld  
16 that state’s replacement statute against constitutional challenge.<sup>14</sup> The revised  
17 Arkansas statute received no notable challenge.

18  
19  
20 <sup>12</sup> 1871 Tenn. Pub. Acts 81, An Act to Preserve the Peace and to Prevent  
21 Homicide, ch. 90, § 1; *State v. Wilburn*, 66 Tenn. 57, 61 (1872).

22 <sup>13</sup> 1881 Ark. Acts 191, An Act to Preserve the Public Peace and Prevent  
23 Crime, chap. XCVI, § 1-2 (“That any person who shall wear or carry, in any  
24 manner whatever, as a weapon, any dirk or bowie knife, or a sword, or a spear in a  
25 cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such  
26 pistols as are used in the army or navy of the United States, shall be guilty of a  
27 misdemeanor. . . . Any person, excepting such officers or persons on a journey, and  
28 on his premises, as are mentioned in section one of this act, who shall wear or carry  
any such pistol as i[s] used in the army or navy of the United States, in any manner  
except uncovered, and in his hand, shall be guilty of a misdemeanor.”).

<sup>14</sup> *State v. Wilburn*, 66 Tenn. 57, 61 (1872).

1           18. The second prong which these states employed was a prohibition on  
2 the sale of certain pistols. Tennessee prohibited “any person to sell, or offer to sell,  
3 or bring into the State for the purpose of selling, giving away, or otherwise  
4 disposing of, belt or pocket pistols, or revolvers, or any other kind of pistol, except  
5 army or navy pistols.”<sup>15</sup> Arkansas followed suit but went even further by  
6 prohibiting the sale of pistol cartridges as well. “Any person who shall sell, barter,  
7 or exchange, or otherwise dispose of, or in any manner furnish to any person any  
8 dirk or bowie knife, or a sword or a spear in a cane, brass or metal knucks, or any  
9 pistol, of any kind of whatever, except as are used in the army or navy of the United  
10 States, and known as the navy pistol, or any kind of cartridge for any pistol, or any  
11 person who shall keep such arms or cartridges for sale, shall be guilty of a  
12 misdemeanor.”<sup>16</sup>

13           19. Throughout the nineteenth century, Americans voiced their displeasure  
14 with the practice of carrying weapons in public spaces.<sup>17</sup> Condemnations of such  
15 behavior and calls for regulations rang out across the country and became  
16 increasingly common during the late nineteenth century when economic and  
17 technological developments had made them easier to produce and cheaper to  
18 purchase. Arkansas and Tennessee were no exception to this national rule, and  
19 commentators there engaged in the same discourse of their counterparts elsewhere.  
20 The “shocks and violent convulsions which have been so fatal to law and order in  
21 the South” were well known, as was the fact that “the pistol, the knife, the shotgun  
22

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23           <sup>15</sup> 1879 Tenn. Pub. Act 135-36, An Act to Prevent the Sale of Pistols,  
24 chap. 96, § 1; *State v. Burgoyne*, 75 Tenn. 173, 173-74 (1881).

25           <sup>16</sup> Acts of the General Assembly of Arkansas, No. 96 § 3 (1881).

26           <sup>17</sup> For example, see Patrick Charles, *Armed in America* 152 (2018) (noting  
27 the Georgia Supreme Court’s view that it was “at a loss to follow the line of  
28 thought that extends the guarantee to the right to carry pistols, dirks, Bowie-knives,  
and those other weapons of like character, which, as all admit, are the greatest  
nuisances of our day.” (quoting *Hill v. State*, 53 Ga. 472, 474 (1874))).

1 and the bludgeon too often do their bloody work.”<sup>18</sup> After the 1875 statute went  
2 into effect in Arkansas, news editors began praising it as “about the best law that  
3 has ever been enacted in this state,” and one that, had it been in effect since  
4 statehood in 1836, “would have saved the lives of thousands of good men who have  
5 fallen victim to the vice of carrying deadly weapons, or from the results and natural  
6 consequences thereof.”<sup>19</sup> Some judges in Tennessee began handing down penalties  
7 of a fifty-dollar fine plus sixty days in jail, and “as a result few persons carry deadly  
8 weapons in [that] county.”<sup>20</sup> Reports of this rigid enforcement in Tennessee elicited  
9 praise among Arkansans, who viewed it as a social benefit that in Tennessee “men  
10 who for years converted themselves into walking arsenals discover that they can  
11 pursue their ordinary vocations without fear that they may at any moment be called  
12 upon to defend their persons against assault.”<sup>21</sup> From their perspective, the distrust  
13 of one’s fellow community members that went along with habitual gun-toting was a  
14 burden of fear that could only be lifted by prohibiting deadly weapons in the public  
15 sphere. Middle-class Americans, white southerners included, held the view that  
16

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18 <sup>18</sup> “Crime in the South” *Arkansas Democrat* (Little Rock, Arkansas), June 7,  
1879, 2.

19 <sup>19</sup> *Newport News* (Newport, Arkansas), quoted in *Daily Arkansas Gazette*  
20 (Little Rock, Arkansas), April 27, 1875, 2.

21 <sup>20</sup> The practice began with Judge Horrigan of Shelby County, the seat of  
22 which is Memphis, Tennessee. Judge Quarles of Nashville declared his intention to  
23 follow suit. *Daily Arkansas Gazette* (Little Rock, Arkansas), January 7, 1883, 4.  
24 Judge Allen of Davidson County, Tennessee pledged to “impartially enforce the  
25 law” regarding weapons and “declared that ‘it would make no difference of how  
26 high degree a man was, if he was convicted before him of carrying a pistol he  
27 would have to go to jail as well as pay a fine, and it simply came down to this: if he  
28 was bound to carry a pistol he was bound to go to jail. That only ruffians carried  
pistols and it gave them an unfair advantage over other citizens.’” *Daily Arkansas  
Gazette* (Little Rock, Arkansas), May 13, 1883, 4.

<sup>21</sup> *Daily Arkansas Gazette* (Little Rock, Arkansas), January 7, 1883, 4.



1 carrying deadly weapons was not honorable, and that such behavior should be  
2 stopped.<sup>22</sup>

3 20. To fully understand these regulations, it is necessary to understand the  
4 different kinds of pistols and revolvers available during this time period. First, at  
5 the larger end of the spectrum was the “army pistol” or “holster pistol,” which was  
6 originally fashioned after the “horse pistols” that had been adopted by mounted  
7 units in Europe and the United States. Such pistols were typically designed to be  
8 carried in a saddle mounted holster and could weigh four pounds or more when  
9 loaded. Though the firearm became slightly smaller and more conducive to being  
10 worn on the person by officers beginning in the 1870s, they remained the largest  
11 gun in Colt’s pistol lineup and carried a higher caliber; they were issued in large  
12 numbers by the United States Army and Navy during the Civil War and postbellum  
13 eras.<sup>23</sup> The Arkansas and Tennessee restrictions carved out an exception for these  
14 weapons, but only when carried openly in the hand.

15 21. Second, “belt pistols” were midsized models and would have been  
16 worn in a hip holster attached to the belt. These midsized pistols became popular  
17 among civilians and may have been the most common type of revolver in the  
18 country around the time of the Civil War. The Colt navy pistol took on that  
19 moniker during the antebellum years when that model featured an engraving of a  
20

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21 <sup>22</sup> For an example from Arkansas and Tennessee, see *Daily Arkansas Gazette*  
22 (Little Rock, Arkansas), May 13, 1883, 4 (reporting that a Tennessee district judge  
23 stated “that only ruffians carried pistols and it gave them an unfair advantage over  
24 other citizens,”). See also Mark Anthony Frassetto, “The Myth of Open Carry,”  
*UC Davis Law Review* 55 (June 2022), 2518-2519.

25 <sup>23</sup> On size, variability, and manufacture of Colt pistols, see Jim  
26 Rasenberger, *Revolver: Sam Colt and the Six-Shooter that Changed America* (New  
27 York: Simon and Schuster, 2021); Martin Rywell, *Colt Guns* 66–67, 84–93  
28 (Harriman, TN: Pioneer Press, 1953); R. L. Wilson, *The Colt Heritage: The Official  
History of Colt Firearms from 1836 to the Present* 173 (New York: Simon &  
Schuster, 1979).



1 naval battle. In the postbellum decades, “army” or “holster” models became  
2 smaller and the differences between them and Colt’s “navy” pistols lessened<sup>24</sup>;  
3 during the period in which these statutes were written—about fifteen years after the  
4 Civil War—the “army/navy” description most likely reflected this technological  
5 evolution by referring to the larger, heavier, higher caliber pistols with longer  
6 barrels that were then issued by the United States military. The sales bans under  
7 discussion here generally included “belt” pistols, so it remains unclear whether and  
8 to what extent the Colt’s Navy pistol (which was technically a “belt” model) would  
9 have received exemption on the basis of its name and/or its use by the military  
10 forces.

11 22. Finally, the third kind of pistol available was the “pocket pistol.”  
12 These were substantially smaller than the holster and belt models. Pocket pistols  
13 ranged from single-shot, muzzle-loading derringers with barrels under two inches to  
14 revolvers like Colt’s “pocket navy” six-shooter with a three-inch barrel. After the  
15 Civil War, military purchases slowed, which led gun manufacturers to pivot toward  
16 civilian sales. They marketed pocket pistols heavily. For instance, Colt’s produced  
17 both a “ladies’ model” as well as a “house” pistol—though the latter became more  
18 widely known as a “Fisk” for its use in the infamous murder of the robber baron  
19 Jim Fisk in 1872.<sup>25</sup> The explosion in production was all the more pronounced by  
20 the entry of imitation brands that used lower quality metals with less sophisticated  
21 workmanship to sell pocket pistols at much lower prices than the competition.<sup>26</sup>  
22

23 <sup>24</sup> See note 23, above.

24 <sup>25</sup> For example, see *The Pistol as a Weapon of Defence in the House and on*  
25 *the Road: How to Choose It and How to Use It* 23 (1875) (referring to pocket  
26 pistols, including “the house pistol brought out some years ago by the Colt Arms  
27 Company, and rendered famous by the fact that it was the pistol used by [Edward]  
Stokes in the murder of Fisk”).

28 <sup>26</sup> See note 23, above.

1 These cheap revolvers could be had for a few dollars, with used ones selling for  
2 even less.<sup>27</sup>

3 23. It is in this context that the public carry regulations and associated  
4 sales bans and prohibitory taxes mentioned above must be understood. A  
5 confluence of technical advancements and social changes resulted in the  
6 widespread adoption of new weapons, causing new societal problems that increased  
7 levels of interpersonal violence and ratcheted up public fear. In response, state  
8 legislatures enacted regulations targeting the source of that problem. In addition to  
9 other dangerous weapons, Tennessee and Arkansas targeted “pocket pistols”—  
10 designed to be concealed from public view and increasingly easy to obtain by those  
11 wishing to cause harm, were a target of these laws. The legislatures of both  
12 Tennessee and Arkansas prohibited both the public carrying of these weapons, as  
13 well as their sale to the general public. These regulations remained in force well  
14 into the twentieth century.

15 24. Previous scholarship addressing these statutes has cast them as racially  
16 motivated.<sup>28</sup> Those articles did not investigate deeply the primary sources of the  
17 time. My research shows that these accounts have misrepresented the Tennessee  
18 and Arkansas statutes, which were enacted as a public safety measure rather than an

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19 <sup>27</sup> Colt’s Army revolvers cost about \$20 at the time of the Civil War, but  
20 subsequent entrants into the market sold small pocket pistols for as little as a couple  
21 of dollars. For example, see digitized Sears and Roebuck catalog (1898), pp. 365-  
22 367. Regardless of caliber, the pistols from Colt’s ran about \$12 to \$13 in the  
23 catalog but retailed elsewhere for something closer to \$18 (see pp. 367).

24 Meanwhile, the smaller caliber pocket pistols from other brands could be ordered  
25 for as little as \$1.40 (see pp. 365). For the 1898 Sears & Roebuck catalog online,  
26 see

27 <https://archive.org/details/consumersguideno00sear/page/365/mode/1up?q=pistol>.

28 <sup>28</sup> For example, Stefan B. Tahmassebi, “Gun Control and Racism,” *George Mason University Civil Rights Law Journal* 2, no. 1 (Summer 1991), 74-75; Robert Leider, “Our Non-originalist Right to Bear Arms,” *Indiana Law Journal* 89, no. 4, 1619-1620.

1 attempt to disarm Black residents. The argument made by other scholars, again  
2 based on little more than inference, has been that most white men served in the  
3 Civil War or had the means to purchase a “army/navy” pistol, and that the  
4 army/navy exception was tantamount to a whites-only exception to this policy.<sup>29</sup>  
5 Civil War soldiers on both sides of the conflict were unlikely to be issued a  
6 revolver unless they were officers, cavalry, or artillery; a great number of enlisted  
7 soldiers who possessed revolvers during the conflict had purchased them on their  
8 own, and at times their carrying of the weapons caused sufficient trouble within the  
9 ranks that officers confiscated them. Others discarded heavy and seemingly  
10 unnecessary pistols on long, grueling marches.<sup>30</sup> Confederate service did not  
11 automatically correlate to white possession of an exempted pistol.

12 25. Rather than impute racism to these laws simply because of their  
13 occurrence during Reconstruction, we should embed them within their appropriate  
14 political and cultural context. The fact that Tennessee’s legislature amended the  
15 public carry law so swiftly to add the army/navy exception could indicate to the  
16 casual observer that white residents were dissatisfied with the original statute;  
17 however, when the statutes and their constitutional challenges are placed in  
18 chronological order and interpreted in light of the other primary sources of the era  
19 (particularly newspapers and the widespread social contempt for publicly carrying  
20 deadly weapons), it is clear that racism was not behind the army/navy exemption.

21 \_\_\_\_\_  
22 <sup>29</sup> Tahmassebi, “Gun Control and Racism,” 74-75.

23 <sup>30</sup> On pistols and other arms issued during the Civil War, see Katelyn Brown,  
24 “Armed to the Teeth,” *Military Images* 33, no. 4 (Autumn 2015), 32-36; Joseph G.  
25 Bilby, *Civil War Firearms: Their Historical Background and Tactical*  
26 *Use* (Conshohocken, PA: Combined Books, 1996); Graham Smith, *Civil War*  
27 *Weapons* (New York: Chartwell, 2011); Jack Coggins, *Arms and Equipment of the*  
28 *Civil War* (New York: Fairfax Press, 1982); *Arms and Equipment of the*  
*Union* (Alexandria, VA: Time-Life Books, 1999); Ken Bauman, *Arming the*  
*Suckers: A Compilation of Illinois Civil War Weapons* (Dayton, OH: Morningside  
House, 1989).

1 Instead, it represented the best effort of Tennessee lawmakers to emulate the kind  
2 of comprehensive public carry prohibition that was in force in Texas<sup>31</sup> while also  
3 respecting the parameters set forth by the state supreme court in *Andrews v. State*.  
4 The amendatory statute did not simply provide an exemption for army/navy  
5 pistols—it specified that even those pistols could not be carried in public unless  
6 openly in the hand. Just like today, it was not common at that time to see a person  
7 walking along a public street carrying a gun in hand; such behavior would have  
8 been understood as an emergency requiring the intervention of local officers of the  
9 law.

### 10 **III. THE RECENT EMERGENCE OF LARGE-CAPACITY MAGAZINES**

11 26. As explained below, the modern large-capacity magazine as we know  
12 it today was not widely distributed in the United States until quite recently. The  
13 semi-automatic weapons with which twenty-first century Americans associate large  
14 capacity magazines were either not in existence or not manufactured in large  
15 numbers until the twentieth century. Nineteenth-century magazines capable of  
16 storing more than ten rounds of ammunition at a time were not usually detachable  
17 (which made for slower reloading time) or were designed for large, military-grade  
18 firearms that were not capable of being used or carried for personal use.

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19  
20 <sup>31</sup> Texas featured a comprehensive deadly weapon law that prohibited the  
21 open or concealed carrying of “any pistol, dirk, dagger, slung-shot, sword-cane,  
22 spear, brass-knuckles, bowie knife, or any other kind of knife manufactured or sold  
23 for the purposes of offense or defense.” There were a few exceptions, such as for  
24 travelers, peace officers, and anyone who “has reasonable grounds for fearing an  
25 unlawful attack on his person, and that such ground of attack shall be immediate  
26 and pressing.” *General Laws of Texas*, ch. XXXIV, §1 (1871). The original  
27 statutes in Arkansas and Tennessee indicate legislative intent to enact a  
28 comprehensive law like this one, but the decisions from their state courts in *Wilson*  
and *Andrews*, respectively, prevented them from doing so; in Texas, on the other  
hand, cases *English* and *Duke* upheld the constitutionality of the deadly weapon law  
without requiring an army/navy exception. See *English v. State of Texas*, 35 Tex.  
473 (1872); *State of Texas v. Duke* 42 Tex. 455 (1874).

27. In the decades following the Civil War, lever-action rifles became commercially available to American consumers for the first time. Lever-action rifles permitted the user to fire multiple shots without reloading. The lever-action design usually featured a fixed, tubular magazine that was loaded through a loading port on the side of the firearm. While there are a handful of examples of these fixed tubular magazines capable of holding more than ten cartridges during that time period, such as the famous Winchester Model 1873 Repeating Rifle,<sup>32</sup> between each shot the user had to engage the lever action to discharge the spent shell and load a fresh cartridge from the magazine into the chamber. And when all rounds had been expended, the user had to individually load cartridges back into the magazine by inserting them through the loading port.

28. In fact, developments in cartridge design in the second half of the 19th Century led to a shift toward smaller, not larger, magazine capacities, such that the Winchester 1883 Hotchkiss Repeater was chambered for the newer 45-70 US Government cartridge and featured a magazine in the butt stock that held 6 rounds.<sup>33</sup> And the Winchester Model 1894 Repeating Rifle was chambered for various center-fire cartridges and its maximum magazine capacity was only 8 rounds.<sup>34</sup>

29. Around the turn of the twentieth century, John M. Browning began working on the design of semi-automatic firearms, which functioned through a “blowback” method in which “The recoil from the exploded cartridge ejects the empty shell, cocks the hammer, and throws a fresh cartridge into the chamber.”<sup>35</sup> This design was sometimes referred to as “automatic,” though its function aligns

<sup>32</sup> Thomas Henshaw, *The History of Winchester Firearms, 1866-1992* (Clinton, NJ: Winchester Press, 1993), 13-19.

<sup>33</sup> Henshaw, *Winchester Firearms*, 23-24. On cartridges, see Frank C. Barnes and Stan Skinner, *Cartridges of the World: A Complete and Illustrated Reference for over 1500 Cartridges* 11<sup>th</sup> ed. (Iola, WI: Gun Digest Books, 2009), 96-97.

<sup>34</sup> Henshaw, *Winchester Firearms*, 41.

<sup>35</sup> “Model 1903,” Catalogue No. 71 (June 1904), 60. Winchester Repeating Arms Company Catalogs 1904-1908, Rare Books, McCracken Research Library, Buffalo Bill Center of the West, Cody, Wyoming.

1 with our current definition of “semi-automatic”; it was also referred to as “auto-  
 2 loading” or “self-loading.” Winchester released its Model 1903 Automatic Rifle,  
 3 which employed this method, and featured a 10-round, fixed, tubular magazine for  
 4 .22 caliber cartridges. According to its product description, “...all that is necessary  
 5 to do to shoot the ten cartridges that the magazine holds is to pull the trigger for  
 6 each shot.”<sup>36</sup> Winchester did not release a semi-automatic sporting rifle featuring a  
 7 detachable magazine until its Model 1905 Self-Loading Rifle, and that detachable  
 8 box magazine held only five cartridges in a single column.<sup>37</sup> The subsequent semi-  
 9 automatic model, called the Model 1907 Self-Loading Rifle, featured a 5-round  
 10 detachable box magazine.

11 30. A major rival of Winchester was Marlin Firearms, a company that  
 12 became a highly popular producer of lever-action rifles. Marlin did not begin  
 13 manufacturing semi-automatic rifles until 1931 when the company (under new  
 14 leadership) released the 22 Caliber Autoloading Rifle, also called the Model 50 /  
 15 50E.<sup>38</sup> It came with a six-round detachable clip magazine.<sup>39</sup>

16 31. As the twentieth century wore on, both Marlin and Winchester  
 17 featured semi-automatic rifles as a part of their regular lineup of sporting firearms,  
 18 though lever-action, pump action, and bolt action designs tended to be more  
 19 popular.<sup>40</sup> The magazine capacities of their semi-automatic models with detachable  
 20 magazines remained at or below 10 rounds with very few exceptions. In 1948,  
 21 Marlin released the Model 89C chambered for .22 caliber long rifle rounds, which  
 22 was sold with a standard 7-shot clip magazine. Beginning in 1953, new models

23 <sup>36</sup> “Model 1903,” Catalogue No. 71 (June 1904), 60. Winchester Repeating  
 24 Arms Company Catalogs 1904-1908, Rare Books, McCracken Research Library,  
 Buffalo Bill Center of the West, Cody, Wyoming.

25 <sup>37</sup> Henshaw, *Winchester Firearms*, 61-61.

26 <sup>38</sup> William S. Brophy, *Marlin Firearms: A History of the Guns and the  
 Company that Made Them* (Harrisburg, PA: Stackpole Books, 1989), 300-301.

27 <sup>39</sup> Brophy, *Marlin Firearms*, 301.

28 <sup>40</sup> See the catalogs of Marlin Firearms and Winchester Repeating Arms  
 Company for the 1950s through the 1990s. Winchester Catalogs, Rare Books; and  
 Winchester and Marlin Catalogs and Literature, MS 162, McCracken Research  
 Library, Buffalo Bill Center of the West, Cody, Wyoming.



1 were sold with two 5-shot clip magazines. In 1957, that changed once again when  
2 standard magazines for new manufactures was a 12-shot clip magazine.<sup>41</sup> The last  
3 year in which Marlin featured the Model 89C was 1961; for the next two decades or  
4 more, the company's standard magazine sizes tended to max out at 7 rounds.<sup>42</sup>

5 32. Even though Winchester produced semi-automatic rifles before  
6 Marlin, the company did not sell rifles with a standard clip magazine capacity over  
7 10 rounds to civilians through at least 1996.<sup>43</sup> For a brief period in the 1970s (1974-  
8 1978), the company produced the Model 490 Repeating (Autoloading) 22 Rim Fire  
9 Rifle. These firearms came with a standard 5-round clip magazine and were shown  
10 with that magazine in Winchester catalogs; customers who wish to purchase  
11 magazines holding 10 or 15 rounds had to do so as accessories.<sup>44</sup>

12 33. Records relating to the production and advertisement of rifles  
13 manufactured by two of the most popular brands shows that even though detachable  
14 clip/box magazines have been in existence since the early twentieth century, they  
15 were not generally sold with a capacity of more than 10 rounds until recently. In  
16 fact, these records show that during most of the twentieth century standard clip/box  
17 magazine sizes usually ranged from 3 to 7 rounds.<sup>45</sup>

#### 18 IV. CONCLUSIONS

19 34. An important lesson that the study of history shows us is that  
20 nineteenth-century Americans confronted a gun violence problem, and their

21 <sup>41</sup> Brophy, *Marlin Firearms*, 306-307.

22 <sup>42</sup> Marlin Catalogs, Folders 1/13-1/16, MS 162, Winchester and Marlin  
23 Catalogs and Literature, McCracken Research Library, Buffalo Bill Center of the  
West, Cody, Wyoming.

24 <sup>43</sup> Marlin Catalogs, Folders 1/13-1/16, MS 162, Winchester and Marlin  
Catalogs and Literature, McCracken Research Library, Buffalo Bill Center of the  
West, Cody, Wyoming.

25 <sup>44</sup> Henshaw, *Winchester Firearms*, 174. Winchester Catalogs 1970-1975,  
26 Folder 1/3, MS 162, Winchester and Marlin Catalogs and Literature, McCracken  
Research Library, Buffalo Bill Center of the West, Cody, Wyoming.

27 <sup>45</sup> See the catalogs of Marlin Firearms and Winchester Repeating Arms  
28 Company for the 1950s through the 1990s. Winchester Catalogs, Rare Books; and  
Winchester and Marlin Catalogs and Literature, MS 162, McCracken Research  
Library, Buffalo Bill Center of the West, Cody, Wyoming.



1 solution was the enactment of state and local regulations that might limit the  
2 number of pistols in circulation. These took the form of public carry laws,  
3 prohibitive taxes, and other sales restrictions. These states targeted pocket pistols  
4 and other types of weapons that, due to their concealability, were associated with  
5 forms of criminal activity that were threatening the public at that time.

6 35. These restrictions on pocket pistols provide historical precedent for  
7 California's restrictions on large-capacity magazines. As explained above, large-  
8 capacity magazines as we understand them today only became commercially  
9 available for the first time in the later parts of the twentieth and earlier parts of the  
10 twenty-first. Thus, like with pocket pistols in the latter half of the nineteenth  
11 century, these large-capacity magazines are associated with new social problems  
12 and criminal use (*e.g.*, the rise of high-casualty mass shootings). California's  
13 regulation, being a prohibition on the sale, transfer, and manufacture of such  
14 magazines, is thus quite similar to the sale restrictions in Tennessee and Arkansas.

15 36. As stated above, and as with any historical research project, my work  
16 in this area is still ongoing. There is significant research and analysis to be done on  
17 the drafting and enforcement of these statutes, as well as the attitudes of residents  
18 toward them as time wore on. Very little research that is based upon primary  
19 sources, other than the review of case law and historical statutes, has yet been  
20 conducted. Still, this brief account of pistol regulations from late-nineteenth  
21 century Tennessee and Arkansas demonstrates an important theme in the history of  
22 firearms and weapons regulations in the United States: that states enacted  
23 restrictions upon certain types of weapons, like pocket pistols, that were uniquely  
24 adaptable to and associated with certain types of crime that threatened public safety  
25 at the time, while also ensuring that the right of individuals to arm themselves for  
26 self-defense in an emergency or upon their private property was not destroyed.

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct.

3 Executed on November 8, 2022, at Fort Worth, TX.  
4  
5

6 *Brennan Rivas*

7 Brennan Rivas  
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### INDEX OF EXHIBIT

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A	Curriculum Vitae of Brennan Gardner Rivas	1-4

## **EXHIBIT A**

**Brennan Gardner Rivas**  
Curriculum Vitae · Oct 2022

**Employment**

Lloyd Lewis Fellow in American History, The Newberry Library, 2021-2022  
Bill & Rita Clements Fellow for the Study of Southwestern America, Southern Methodist University, Clements Center for Southwest Studies, 2020-2021  
Lecturer in American History (full-time), Texas Christian University, Department of History, 2019-2020

**Education**

Ph.D., History, Texas Christian University, 2019  
Thesis: “[The Deadly Weapon Laws of Texas](#): Regulating Guns, Knives, & Knuckles in the Lone Star State, 1836-1930”  
Advisor: [Gregg Cantrell](#)  
M.A., History, Texas Christian University, 2013  
Thesis: “Texas Antitrust Law: Formulation and Enforcement, 1889-1903”  
B.A. with Honors, History, Oklahoma State University, 2010

**Publications**

*Refereed Journal Articles*

“[An Unequal Right to Bear Arms](#): State Weapons Laws and White Supremacy in Texas, 1836-1900,” *Southwestern Historical Quarterly* 121 (Jan 2018): 284-303.

*Law Articles*

“Strange Bedfellows: Racism and Gun Rights in American History and Current Scholarship” in Joseph Blocher and Jake Charles, eds., *New Histories of Gun Rights and Regulation: Essays on the Place of Guns in American Law and Society* (New York: Oxford University Press, forthcoming)

“[Enforcement of Public Carry Restrictions: Texas as a Case Study](#),” *U.C. Davis Law Review* (May 2022)

“[The Problem with Assumptions: Reassessing the Historical Gun Policies of Arkansas and Tennessee](#),” *Second Thoughts*, Duke Center for Firearms Law (Jan 2022)

*Short Pieces*

“Charles F. Cooley,” in [Wanted in America: Posters Collected by the Fort Worth Police Department, 1898-1903](#), edited by LeAnna Schooley and Tom Kellam. Fort Worth: TCU Press, 2019.

Review of David R. Berman, *George Hunt: Arizona’s Crusading Seven-Term Governor*, in [Southwestern Historical Quarterly](#) 114, no. 3 (January 2016): 327-329.

**Public History**

“[In the Past, Americans Confronted Gun Violence by Taking Action](#),” *Washington Post: Made by History Blog* (Jun 2022)

- ~ Op-ed showcasing open-mindedness of 19<sup>th</sup> century Americans about experimenting with new gun control measures
- “[The Origin of Public Carry Laws in Texas](#),” *Texas Gun Sense Blog* (Feb 2021)
- “[Texas Gun Laws](#),” Online Primary Source Collection, hosted by [Omeka](#)
  - ~ Online collection featuring primary sources from my research; feature exhibit titled “Crafting a Public Carry Law”
- “[The Deadly Weapon Laws of Texas](#),” Preserving Our Past: Community History Workshop, Center for Texas Studies at TCU (Nov 2020)
  - ~ Public lecture featuring special insights for genealogical researchers
- “The Deadly Weapon Laws of Texas,” Graduate/Undergraduate Public History Seminar, Tarleton State University (Sept 2020)
  - ~ Research presentation focusing on interpretation of county court records
- “[When Texas Was the National Leader in Gun Control](#): How the Land of Gunslinger Mythology Regulated Weapons to Reduce Violence,” *Washington Post: Made by History Blog* (Sept 2019)
  - ~ Op-ed highlighting long history of weapon regulation in Texas

### **Fellowships and Awards**

Lloyd Lewis Fellowship in American History, 2021-2022

- ~ Awarded by the Newberry Library to scholars using its collection to research topics in American history

Bill & Rita Clements Fellowship for the Study of Southwestern America, 2020-2021

- ~ Awarded by the SMU Clements Center for Southwest Studies to two scholars of Texas, the Southwest, or the U.S.-Mexico borderlands who are developing first books

The Benjamin W. Schmidt Memorial Scholarship, 2018-2019

- ~ Awarded by the TCU Department of History to a PhD candidate who shows exceptional professional promise; highest departmental prize for graduate students

Texas Christian University Department of History, Shinko and Thomas McDonald Research Prize in Texas History, 2019, 2017

- ~ Awarded by the TCU Department of History to a graduate student with the best research on antebellum Texas history

### **Works in Progress**

*The Revolver Must Go: The Rise and Fall of a Gun Control Movement in Texas*

Aim: Scholarly monograph exploring the rise of a gun control movement in nineteenth-century Texas and the regulatory strategies which it embraced. Widespread acceptance of strict, ambitious gun control laws in the “Wild West” belies current assumptions about Texas and challenges the reigning interpretation of the Second Amendment as a guarantor of expansive gun rights

Status: Editing manuscript

“The Texas Anti-Trust Movement: Antimonopoly, Populism, and Reform in the Long Progressive Era”

Aim: Scholarly article interpreting Texas antitrust policy an example of innovative reform in the Great Plains and trans-Mississippi West

Status: Research and writing in progress

## **University Teaching Experience**

### *Instructor of Record*

Lecturer in American History, Texas Christian University 2019-2020  
“American History to 1877: Social Movements & the Politics of Slavery” (HIST 10603)  
“American History since 1877: The Quest for Equality” (HIST 10613)  
“History of Texas: A Transnational Look at the American Southwest” (HIST 40743)

### *Graduate Student Instructor*

Teaching Assistant, Texas Christian University 2017-2018  
American History to 1877 (HIST 10603)  
American History since 1877 (HIST 10613)

### *Teaching Interests*

American History, Legal History, Southwestern Borderlands, Civil War Era, American West, Gilded Age & Progressive Era, Women’s History

## **Conference Presentations & Invited Talks**

“Reassessing Assumptions about Historical Arkansas and Tennessee Handgun Regulations,” Race and Guns Roundtable, Duke Center for Firearms Law, Durham, North Carolina, November 2021  
“Enforcement of Public Carry Restrictions: Texas as a Case Study,” The Second Amendment at the Supreme Court: 700 Years of History and the Modern Effects of Guns in Public, Davis, California, October 2021  
“Race & Guns,” Newberry Library Colloquium, Chicago, Illinois, October 2021  
“Unlawful Carrying: Enforcing the Pistol Law in Texas, 1870-1920,” Texas State Historical Association Annual Meeting, Corpus Christi, Texas, February 2019  
“Regulating Deadly Weapons in Nineteenth-Century Texas,” Invited Lecturer, Los Bexareños Hispanic Genealogical and Historical Conference, San Antonio, Texas, September 2018  
“Impregnable Citadels of Capital: American Monopolies in the British Radical Press,” Southern Conference on British Studies Annual Meeting, St. Pete Beach, Florida, November 2016  
“Dating Violence in Texas: Why the State Family Code Obstructs Accurate Reporting about Sexual Assault,” TCU Women & Gender Studies Research Symposium, 2015

## **Service**

Invited Guest, “How to Make the Most of Your Time in Graduate School,” Dept. of History Orientation Day, 2020  
~ Advise incoming graduate students on strategies for success in the PhD program, emphasizing importance of intellectual development  
Panelist, “Everything You Wanted to Know about TCU but Were Too Afraid to Ask,” Dept. of History Orientation Day, 2016  
~ Provide honest and confidential information to prospective graduate students  
Graduate Student Mentor, 2015  
~ Informal departmental program designed to ease the transition for incoming graduate students



**Professional Memberships**

Society for Historians of the Gilded Age and Progressive Era

Texas State Historical Association

Southern Historical Association

American Historical Association

**Languages**

Spanish (Proficient)

Latin (Proficient)

## **EXHIBIT 12**

1 ROB BONTA  
Attorney General of California  
2 MARK R. BECKINGTON  
Supervising Deputy Attorney General  
3 ROBERT L. MEYERHOFF  
Deputy Attorney General  
4 State Bar No. 298196  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013-1230  
Telephone: (213) 269-6177  
6 Fax: (916) 731-2144  
E-mail: Robert.Meyerhoff@doj.ca.gov  
7 *Attorneys for Defendant Rob Bonta in his*  
*official capacity as Attorney General of the*  
8 *State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**  
20 **Attorney General of the State of**  
21 **California; and DOES 1-10,**

22 Defendants.  
23  
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Case No. 17-cv-1017-BEN-JLB

**DECLARATION OF RANDOLPH ROTH**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                                   **DECLARATION OF RANDOLPH ROTH**

2           I, Randolph Roth, declare under penalty of perjury that the following is true  
3 and correct:

4           1.     I am an Arts and Sciences Distinguished Professor of History and  
5 Sociology at The Ohio State University. I have personal knowledge of the facts set  
6 forth in this declaration, and if called upon as a witness, I could and would testify  
7 competently as to those facts.

8           2.     I have been retained by the California Department of Justice to render  
9 expert opinions in this case. I am being compensated at a rate of \$250 per hour.

10                           **BACKGROUND AND QUALIFICATIONS**

11           3.     I received a B.A. in History with Honors and Distinction in 1973 from  
12 Stanford University, where I received the James Birdsall Weter prize for the  
13 outstanding honors thesis in History. I received a Ph.D. in History in 1981 from  
14 Yale University, where I received the Theron Rockwell Field prize for the  
15 outstanding dissertation in the Humanities and the George Washington Eggleston  
16 prize for the outstanding dissertation in American history. I have taught courses in  
17 history, the social sciences, and statistics since 1978, with a focus on criminology  
18 and the history of crime. A true and correct copy of my curriculum vitae is attached  
19 as **Exhibit A** to this declaration.

20           4.     I am the author of *American Homicide* (The Belknap Press of the  
21 Harvard University Press, 2009), which received the 2011 Michael J. Hindelang  
22 Award from the American Society of Criminology awarded annually for the book  
23 published over the three previous years that “makes the most outstanding  
24 contribution to research in criminology over the previous three years,”<sup>1</sup> and the  
25 2010 Allan Sharlin Memorial Prize from the Social Science History Association for

26 \_\_\_\_\_  
27           <sup>1</sup> See American Society of Criminology, Michel J. Hindelang outstanding  
28 Book Award Recipients, <https://asc41.com/about-asc/awards/michael-j-hindelang-outstanding-book-award-recipients/>.

1 outstanding books in social science history.<sup>2</sup> *American Homicide* was also named  
2 one of the Outstanding Academic Books of 2010 by *Choice*, and the outstanding  
3 book of 2009 by *reason.com*. The book is an interregional, internationally  
4 comparative study of homicide in the United States from colonial times to the  
5 present. I am a Fellow of the American Association for the Advancement of  
6 Science, and I have served as a member of the National Academy of Sciences  
7 Roundtable on Crime Trends, 2013-2016, and as a member of the Editorial Board  
8 of the *American Historical Review*, the most influential journal in the discipline.

9 5. I am the principal investigator on the National Homicide Data  
10 Improvement Project, a project funded by the National Science Foundation (SES-  
11 1228406, [https://www.nsf.gov/awardsearch/showAward?AWD\\_ID=1228406](https://www.nsf.gov/awardsearch/showAward?AWD_ID=1228406)) and  
12 the Harry Frank Guggenheim Foundation to improve the quality of homicide data  
13 in the United States from 1959 to the present. The pilot project on Ohio has drawn  
14 on a wide range of sources in its effort to create a comprehensive database on  
15 homicides (including narratives of each incident) based on the mortality statistics of  
16 the Ohio Department of Health, the confidential compressed mortality files of the  
17 National Center for Health Statistics, the F.B.I.'s Supplementary Homicide Reports,  
18 death certificates, coroner's reports, the homicide case files of Cincinnati,  
19 Cleveland, and Columbus, obituaries, and newspaper accounts.

20 6. I have published numerous essays on the history of violence and the  
21 use of firearms in the United States, including a) "Guns, Gun Culture, and  
22 Homicide: The Relationship between Firearms, the Uses of Firearms, and  
23 Interpersonal Violence in Early America," *William and Mary Quarterly* (2002) 59:  
24 223-240 ([https://www.jstor.org/stable/3491655#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/3491655#metadata_info_tab_contents)); b)  
25 "Counting Guns: What Social Science Historians Know and Could Learn about  
26

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27 <sup>2</sup> See Social Science History Association, Allan Sharlin Memorial Book  
28 Award, [https://ssha.org/awards/sharlin\\_award/](https://ssha.org/awards/sharlin_award/).

1 Gun Ownership, Gun Culture, and Gun Violence in the United States,” *Social*  
 2 *Science History* (2002) 26: 699-708  
 3 ([https://www.jstor.org/stable/40267796#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/40267796#metadata_info_tab_contents)); c) “Why  
 4 Guns Are and Aren’t the Problem: The Relationship between Guns and Homicide  
 5 in American History,” in Jennifer Tucker, Barton C. Hacker, and Margaret Vining,  
 6 eds., *A Right to Bear Arms? The Contested Role of History in Contemporary*  
 7 *Debates on the Second Amendment* (Washington, D.C.: Smithsonian Institution  
 8 Scholarly Press, 2019); and d) “The Opioid Epidemic and Homicide in the United  
 9 States,” co-authored with Richard Rosenfeld and Joel Wallman, in the *Journal of*  
 10 *Research in Crime and Delinquency* (2021)  
 11 ([https://www.researchgate.net/publication/348513393\\_The\\_Opioid\\_Epidemic\\_and](https://www.researchgate.net/publication/348513393_The_Opioid_Epidemic_and_Homicide_in_the_United_States)  
 12 [Homicide\\_in\\_the\\_United\\_States](https://www.researchgate.net/publication/348513393_The_Opioid_Epidemic_and_Homicide_in_the_United_States)).

13 7. I am also co-founder and co-director of the Historical Violence  
 14 Database. The web address for the Historical Violence Database is:  
 15 <http://cjrc.osu.edu/research/interdisciplinary/hvd>. The historical data on which this  
 16 declaration draws are available through the Historical Violence Database. The  
 17 Historical Violence Database is a collaborative project by scholars in the United  
 18 States, Canada, and Europe to gather data on the history of violent crime and  
 19 violent death (homicides, suicides, accidents, and casualties of war) from medieval  
 20 times to the present. The project is described in Randolph Roth et al., “The  
 21 Historical Violence Database: A Collaborative Research Project on the History of  
 22 Violent Crime and Violent Death.” *Historical Methods* (2008) 41: 81-98  
 23 ([https://www.tandfonline.com/doi/pdf/10.3200/HMTS.41.2.81-](https://www.tandfonline.com/doi/pdf/10.3200/HMTS.41.2.81-98?casa_token=PfjkmSciOwAAAAA:1HrNKToUGfQT4T-L4wqloRc2DFsM4eRmKEc346vchboaSh-X29CkEdqIe8bMoZjBNdk7yNh_aAU)  
 24 [98?casa\\_token=PfjkmSciOwAAAAA:1HrNKToUGfQT4T-](https://www.tandfonline.com/doi/pdf/10.3200/HMTS.41.2.81-98?casa_token=PfjkmSciOwAAAAA:1HrNKToUGfQT4T-L4wqloRc2DFsM4eRmKEc346vchboaSh-X29CkEdqIe8bMoZjBNdk7yNh_aAU)  
 25 [L4wqloRc2DFsM4eRmKEc346vchboaSh-X29CkEdqIe8bMoZjBNdk7yNh\\_aAU](https://www.tandfonline.com/doi/pdf/10.3200/HMTS.41.2.81-98?casa_token=PfjkmSciOwAAAAA:1HrNKToUGfQT4T-L4wqloRc2DFsM4eRmKEc346vchboaSh-X29CkEdqIe8bMoZjBNdk7yNh_aAU)).  
 26 The only way to obtain reliable historical homicide estimates is to review every  
 27 scrap of paper on criminal matters in every courthouse (indictments, docket books,  
 28 case files, and judicial proceedings), every jail roll and coroner’s report, every diary

1 and memoir, every article in every issue of a number of local newspapers, every  
2 entry in the vital records, and every local history based on lost sources, local  
3 tradition, or oral testimony. That is why it takes months to study a single rural  
4 county, and years to study a single city.<sup>3</sup>

5 8. I have provided expert witness testimony in *Miller v. Bonta*, No. 3:19-  
6 cv-01537-BEN-JLB (S.D. Cal.).

7 9. My work on data collection and my research for *American Homicide*,  
8 together with the research I have conducted for related essays, has helped me gain  
9 expertise on the causes of homicide and mass violence, and on the role technology  
10 has played in changing the nature and incidence of homicide and mass violence. I  
11 hasten to add that the insights that my colleagues and I have gained as social  
12 science historians into the causes of violence and the history of violence in the

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13 <sup>3</sup> It is also essential, in the opinion of historians and historical social scientists  
14 involved in the Historical Violence Database, to use capture-recapture mathematics,  
15 when multiple sources are available, to estimate the number of homicides where  
16 gaps or omissions exist in the historical record. The method estimates the  
17 percentage of the likely number of homicides that appear in the surviving records  
18 by looking at the degree to which homicides reported in the surviving legal sources  
19 overlap with homicides reported in the surviving non-legal sources (newspapers,  
20 vital records, diaries, etc.). A greater degree of overlap means a higher percentage  
21 in the surviving records and a tighter confidence interval. A lesser degree of  
22 overlap, which typically occurs on contested frontiers and during civil wars and  
23 revolutions, means a lower percentage and a wider confidence interval. See  
24 Randolph Roth, "American Homicide Supplemental Volume: Homicide Estimates"  
25 (2009) ([https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-Homicide-](https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-Homicide-Estimates.pdf)  
26 [Estimates.pdf](https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-Homicide-Estimates.pdf)); Roth, "Child Murder in New England," *Social Science History*  
27 (2001) 25: 101-147  
28 ([https://www.jstor.org/stable/1171584#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/1171584#metadata_info_tab_contents)); Roth and  
James M. Denham, "Homicide in Florida, 1821-1861: A Quantitative Analysis,"  
*Florida Historical Quarterly* 86 (2007): 216-239; and Douglas L. Eckberg, "Stalking  
the Elusive Homicide: A Capture-Recapture Approach to the Estimation of Post-  
Reconstruction South Carolina Killings." *Social Science History* 25 (2001): 67-91  
([https://www.jstor.org/stable/1171582#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/1171582#metadata_info_tab_contents)).



1 United States stem from our tireless commitment to empiricism. Our goal is to  
2 gather accurate data on the character and incidence of violent crimes and to follow  
3 the evidence wherever it leads, even when it forces us to accept the fact that a  
4 hypothesis we thought might be true proved false. As my colleagues and I are fond  
5 of saying in the Criminal Justice Network of the Social Science History  
6 Association, the goal is not to be right, but to get it right. That is the only way to  
7 design effective, pragmatic, nonideological laws and public policies that can help us  
8 address our nation's problem of violence.

## 9 **OPINIONS**

### 10 **I. SUMMARY OF OPINIONS**

11 10. I have been asked by the California Department of Justice to provide  
12 opinions on the history of homicides and mass murders in the United States, with  
13 special attention to the role that technologies have played in shaping the character  
14 and incidence of homicides and mass murders over time, and the historical  
15 restrictions that local and federal authorities have imposed in response to new  
16 technologies that they deemed particularly lethal, prone to misuse, and a danger to  
17 the public because of the ways in which they reshaped the character and incidence  
18 of homicides and mass murders.

19 11. For the past thirty-five years, I have dedicated my career to  
20 understanding why homicide rates rise and fall over time, in hopes of understanding  
21 why the United States—which, apart from the slave South, was perhaps the least  
22 homicidal society in the Western world in the early nineteenth century—became by  
23 far the most homicidal, as it remains today. I discovered that the key to low  
24 homicide rates over the past 450 years has been successful nation-building. High  
25 homicide rates among unrelated adults—friends, acquaintances, strangers—  
26 coincide with political instability, a loss of trust in government and political leaders,  
27 a loss of fellow feeling among citizens, and a lack of faith in the justice of the social  
28

1 hierarchy.<sup>4</sup> As a nation, we are still feeling the aftershocks of our catastrophic  
 2 failure at nation-building in the mid- and late-nineteenth century, from the political  
 3 crisis of the late 1840s and 1850s through the Civil War, Reconstruction, and the  
 4 rise of Jim Crow.

5 12. Our nation's homicide rate would thus be high today even in the  
 6 absence of modern technologies that have made firearms far more capable of  
 7 injuring multiple people over a short span of time than they were in colonial and  
 8 Revolutionary era. But the evidence also shows that the availability of guns and  
 9 changes in firearms technology, especially the emergence of modern breech-  
 10 loading firearms in the mid-nineteenth century, and of rapid-fire semiautomatic  
 11 weapons and extended magazines in the late twentieth century, have pushed the  
 12 homicide rate in United States well beyond what it would otherwise have been.

13 13. My opinion will address in turn: 1) firearms restrictions on colonists  
 14 from the end of the seventeenth century to the eve of the Revolution, when  
 15 homicide rates were low among colonists and firearms were seldom used in  
 16 homicides among colonists when they did occur; 2) the development during the  
 17 Founding and Early National periods of laws restricting the use or ownership of  
 18 concealable weapons in slave and frontier states, where homicide rates among  
 19 persons of European ancestry soared after the Revolution in large part because of

20 <sup>4</sup> See Randolph Roth, "Measuring Feelings and Beliefs that May Facilitate (or  
 21 Deter) Homicide," *Homicide Studies* (2012) 16: 196-217  
 22 ([https://journals.sagepub.com/doi/pdf/10.1177/1088767912442501?casa\\_token=dkP\\_nZZxCaYAAAAA:vL522E2inh9U2gr4X2qAhPnqRminWEjLv8nbwrNEhqNpRliTesFI\\_1SDY6tepvZbjwiRWPEom7M](https://journals.sagepub.com/doi/pdf/10.1177/1088767912442501?casa_token=dkP_nZZxCaYAAAAA:vL522E2inh9U2gr4X2qAhPnqRminWEjLv8nbwrNEhqNpRliTesFI_1SDY6tepvZbjwiRWPEom7M)), for an introduction to the ways that social  
 23 science historians can measure the feelings and beliefs that lead to successful  
 24 nation-building. My research has shown that those measures have gone up and  
 25 down with homicide rates among unrelated adults in the United States from  
 26 colonial times to the present. In social science history, as in the non-experimental  
 27 historical sciences (geology, paleontology, evolutionary biology), correlations that  
 28 persist across wide stretches of time and space are not random. They reveal deep  
 patterns that are causal.

1 the increased manufacture and ownership of concealable percussion cap pistols and  
 2 fighting knives; 3) the spread of restrictions on carrying concealed weapons in  
 3 every state but Vermont by World War I, as homicide rates rose across the nation,  
 4 beginning around the time of the Mexican War of 1846-1848 and lasting until  
 5 World War I—a rise caused in part by the invention of modern revolvers, which  
 6 were used in a majority of homicides by the late nineteenth century; 4) the  
 7 difficulty that local and federal officials faced from the colonial era into the early  
 8 twentieth century in addressing the threat of mass murders, which, because of the  
 9 limitations of existing technologies, were carried out by large groups of individuals  
 10 acting in concert, rather than by individuals or small groups; and 5) the spread of  
 11 restrictions in the twentieth and early twenty-first centuries on new technologies,  
 12 including rapid-fire firearms and large capacity magazines, that changed the  
 13 character of mass murder, by enabling individuals or small groups to commit mass  
 14 murder.

## 15 **II. GOVERNMENT REGULATION OF FIREARMS IN RESPONSE TO HOMICIDE** 16 **TRENDS**

### 17 **A. Homicide and Firearms in the Colonial Era (1688-1763)**

18 14. In the eighteenth century, the use and ownership of firearms by Native  
 19 Americans and African Americans, enslaved and free, were heavily regulated.<sup>5</sup> But  
 20 laws restricting the use or ownership of firearms by colonists of European ancestry  
 21 were rare, for two reasons. First, homicide rates were low among colonists from  
 22 the Glorious Revolution of 1688-1689 through the French and Indian War of 1754-  
 23 1763, thanks to political stability, a surge in patriotic fellow feeling within the  
 24 British empire, and greater trust in government.<sup>6</sup> By the late 1750s and early 1760s,  
 25

26 <sup>5</sup> Clayton E. Cramer, “Colonial Firearms Regulation” (April 6, 2016).  
 27 Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2759961](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759961).

28 <sup>6</sup> Randolph Roth, *American Homicide* (Cambridge: The Belknap Press of  
 (continued...)

1 the rates at which adult colonists were killed were roughly 5 per 100,000 adults per  
2 year in Tidewater Virginia, 3 per 100,000 in Pennsylvania, and 1 per 100,000 in  
3 New England.<sup>7</sup> Violence among colonists was not a pressing problem on the eve of  
4 the Revolution.

5 15. Second, the impact of firearms on the homicide rate was modest, even  
6 though household ownership of firearms was widespread.<sup>8</sup> Family, household, and  
7 intimate partner homicides were rare, and only 10 to 15 percent of those homicides  
8 were committed with guns.<sup>9</sup> And because the homicide rate among unrelated adults  
9 was low, the proportion of nondomestic homicides committed with guns was  
10 similarly low—never more than 10 to 15 percent.<sup>10</sup>

11 16. Firearm use in homicides was generally rare because muzzle-loading  
12 firearms had significant limitations as murder weapons in the colonial era.<sup>11</sup> They

13  
14 Harvard University Press, 2009), 63, noting that “Fear of Indians and slaves, hatred  
15 of the French, enthusiasm for the new colonial and imperial governments  
16 established by the Glorious Revolution, and patriotic devotion to England drew  
17 colonists together. The late seventeenth century thus marks the discernible  
18 beginning of the centuries-long pattern linking homicide rates in America with  
19 political stability, racial, religious, and national solidarity, and faith in government  
20 and political leaders.”

21 <sup>7</sup> Roth, *American Homicide*, 61-63, and especially the graphs on 38, 39, and  
22 91. By way of comparison, the average homicide rate for adults in the United  
23 States from 1999 through 2016—an era in which the quality of emergency services  
24 and wound care was vastly superior to that in the colonial era—was 7 per 100,000  
25 per year. See CDC Wonder Compressed Mortality Files, ICD-10  
26 (<https://wonder.cdc.gov/cmfi-cd10.html>), accessed September 8, 2022).

27 <sup>8</sup> Randolph Roth, “Why Guns Are and Aren’t the Problem: The Relationship  
28 between Guns and Homicide in American History,” in Jennifer Tucker, Barton C.  
Hacker, and Margaret Vining, eds., *Firearms and the Common Law: History and  
Memory* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019), 116.

<sup>9</sup> Roth, “Why Guns Are and Aren’t the Problem,” 116.

<sup>10</sup> *Ibid.*, 116-119.

<sup>11</sup> *Ibid.*, 117.

1 were lethal and accurate enough at short range, but they were liable to misfire, given  
2 the limits of flintlock technology; and with the exception of a few double-barreled  
3 pistols, they could not fire multiple shots without reloading.<sup>12</sup> They could be used  
4 effectively to threaten and intimidate, but once they were fired (or misfired), they  
5 lost their advantage: they could only be used as clubs in hand-to-hand combat.  
6 They had to be reloaded manually to enable the firing of another shot, which was a  
7 time-consuming process that required skill and experience.<sup>13</sup> And more important,  
8 muzzle-loading firearms could not be used impulsively unless they were already  
9 loaded for some other purpose.<sup>14</sup> It took at least half a minute (and plenty of elbow  
10 room) to load a muzzle-loader if the weapon was clean and if powder, wadding, and  
11 shot or ball were at hand.<sup>15</sup> The user had to pour powder down the barrel, hold it in  
12 place with wadding, and drop or ram the shot or ball onto the charge.<sup>16</sup> The firing  
13 mechanism also had to be readied, often with a fresh flint.<sup>17</sup> And muzzle-loading  
14 guns were difficult to keep loaded for any length of time, because black powder  
15 absorbed moisture and could corrode the barrel or firing mechanism or make the  
16 charge liable to misfire.<sup>18</sup> The life of a charge could be extended by storing a gun  
17 in a warm, dry place, typically over a fireplace, but even there, moisture from  
18

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19 <sup>12</sup> Ibid.

20 <sup>13</sup> Harold L. Peterson, *Arms and Armor in Colonial America, 1526-1783*  
21 (New York: Bramhall House, 1956), 155-225; Priya Satia, *Empire of Guns: The*  
22 *Violent Making of the Industrial Revolution* (New York: Penguin Press, 2018), 9-  
23 10; and Satia, “Who Had Guns in Eighteenth Century Britain?” in Tucker, Hacker,  
and Vining, *Firearms and the Common Law*, 41-44.

24 <sup>14</sup> Roth, “Why Guns Are and Aren’t the Problem,” 117.

25 <sup>15</sup> Ibid.

26 <sup>16</sup> Ibid.

27 <sup>17</sup> Ibid.

28 <sup>18</sup> Ibid.

1 boiling pots, drying clothes, or humid weather could do damage.<sup>19</sup> That is why  
2 most owners stored their guns empty, cleaned them regularly, and loaded them  
3 anew before every use.<sup>20</sup>

4 17. The infrequent use of guns in homicides in colonial America reflected  
5 these limitations. Family and household homicides—most of which were caused  
6 by abuse or fights between family members that got out of control—were  
7 committed almost exclusively with hands and feet or weapons that were close to  
8 hand: whips, sticks, hoes, shovels, axes, or knives.<sup>21</sup> It did not matter whether the  
9 type of homicide was rare—like family and intimate homicides—or common, like  
10 murders of servants, slaves, or owners committed during the heyday of indentured  
11 servitude or the early years of racial slavery.<sup>22</sup> Guns were not the weapons of  
12 choice in homicides that grew out of the tensions of daily life.<sup>23</sup>

13 18. When colonists anticipated violence or during times of political  
14 instability gun use was more common. When homicide rates were high among  
15 unrelated adults in the early and mid-seventeenth century, colonists went armed to  
16 political or interpersonal disputes,<sup>24</sup> so the proportion of homicides committed with  
17 firearms was at that time forty percent and rose even higher in contested areas on  
18 the frontier.<sup>25</sup> Colonists also armed themselves when they anticipated hostile  
19 encounters with Native Americans, so three-fifths of homicides of Native  
20

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21 <sup>19</sup> Ibid.

22 <sup>20</sup> Ibid.; and Herschel C. Logan, *Cartridges: A Pictorial Digest of Small Arms*  
23 *Ammunition* (New York: Bonanza Books, 1959), 11-40, 180-183.

24 <sup>21</sup> Roth, “Why Guns Are and Aren’t the Problem,” 117.

25 <sup>22</sup> Ibid.

26 <sup>23</sup> Ibid. Contrary to popular belief, dueling was also rare in colonial America.  
Roth, *American Homicide*, 45, 158.

27 <sup>24</sup> Roth, “Why Guns Are and Aren’t the Problem,” 118-119.

28 <sup>25</sup> Ibid., 116-117.

Americans by European Americans in New England were committed with firearms.<sup>26</sup> And slave catchers and posses kept their firearms at the ready, so ninety percent of runaway slaves who were killed in Virginia were shot.<sup>27</sup> Otherwise, however, colonists seldom went about with loaded guns, except to hunt, control vermin, or muster for militia training.<sup>28</sup> That is why firearms had a modest impact on homicide rates among colonists.

**B. The Rise in Violence in the South and on Contested Frontiers during the Early National Period, the Role of New Technologies and Practices, and Regulations on Concealable Weapons (1790s-1840s)**

19. The Founding Generation was zealous in its defense of the people's rights, and so enshrined them in the Constitution. At the same time, they recognized that some citizens could be irresponsible or motivated by evil intent and could thus threaten the security of the government and the safety of citizens.<sup>29</sup> The threats that such citizens posed to public safety could be checked in most instances by ordinary criminal statutes, drawn largely from British common law. But at

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<sup>26</sup> Ibid., 118-119 (reporting that "In New England, 57 percent of such homicides were committed with guns between the end of King Phillip's War in 1676 and the end of the eighteenth century").

<sup>27</sup> Ibid., 118 (reporting that "Petitions to the Virginia House of Burgesses for compensation for outlawed slaves who were killed during attempts to capture them indicate that 90 percent were shot").

<sup>28</sup> Ibid., 118-119.

<sup>29</sup> On the fears of the Founders that their republic might collapse because selfish or unscrupulous citizens might misuse their liberties, see Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969), 65-70, 282-291, 319-328, 413-425, 463-467; Drew R. McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (New York: Cambridge University Press, 1989), 42-45; and Andrew S. Trees, *The Founding Fathers and the Politics of Character* (Princeton: Princeton University Press, 2003), 6-9, 60-65, 86-104, 113-114.



1 times those threats could be checked only by statutes that placed limits on basic  
2 rights.<sup>30</sup>

3 20. The Founders were aware that the rate at which civilians killed each  
4 other or were killed by roving bands of Tories or Patriots rose during the  
5 Revolution.<sup>31</sup> And they recognized that more civilians, expecting trouble with

6  
7 <sup>30</sup> On the Founders' belief that rights might have to be restricted in certain  
8 instances, see Terri Diane Halperin, *The Alien and Sedition Acts: Testing the*  
9 *Constitution* (Baltimore: Johns Hopkins University Press, 2016), 1-8, on restraints  
10 on freedom of speech and the press during the administration of John Adams;  
11 Leonard Levy, *Jefferson and Civil Liberties: The Darker Side* (Cambridge: The  
12 Belknap Press of Harvard University Press, 1963), 93-141, on loosening restrictions  
13 on searches and seizures during the administration of Thomas Jefferson; and Patrick  
14 J. Charles, *Armed in America: A History of Gun Rights from Colonial Militias to*  
15 *Concealed Carry* (New York: Prometheus Books, 2018), 70-121, especially 108-  
16 109, as well as Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and*  
17 *the Origins of Gun Control in America* (New York: Oxford University Press, 2006),  
18 39-70, and Jack N. Rakove, "The Second Amendment: The Highest State of  
19 Originalism," in Carl T. Bogus, ed., *The Second Amendment in Law and History:*  
20 *Historians and Constitutional Scholars on the Right to Bear Arms* (New York: The  
21 New Press, 2000), 74-116, on the limited scope of the Second Amendment. Jack N.  
22 Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution*  
23 (New York: Alfred A. Knopf, 1996), 291, notes that "Nearly all the activities that  
24 constituted the realms of life, liberty, property, and religion were subject to  
regulation by the state; no obvious landmarks marked the boundaries beyond which  
its authority could not intrude, if its actions met the requirements of law." See also  
Rakove, "The Second Amendment: The Highest State of Originalism," *Chicago-*  
*Kent Law Review* 76 (2000), 157  
(<https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3289&context=cklawreview>): "[At] the time when the Second Amendment was  
adopted, it was still possible to conceive of statements of rights in quite different  
terms, as assertions or confirmations of vital principles, rather than the codification  
of legally enforceable restrictions or commands."

25 <sup>31</sup> Roth, *American Homicide*, 145-149; Holger Hoock, *Scars of*  
26 *Independence: America's Violent Birth* (New York: Broadway Books / Penguin  
27 Random House, 2017), 308-322; Alan Taylor, *Divided Ground: Indians, Settlers,*  
28 *and the Northern Borderland of the American Revolution* (New York: Knopf,  
2006), 91-102; George C. Daughan, *Revolution on the Hudson: New York City and*  
(continued...)

1 neighbors, public officials, and partisans, were likely to go about armed during the  
2 Revolution, which is why the proportion of homicides of European Americans by  
3 unrelated adults rose to 33 percent in Virginia and 46 percent in New England.<sup>32</sup>  
4 But the surge in violence ended in New England, the Mid-Atlantic states, and the  
5 settled Midwest once the Revolutionary crisis was over. In those areas homicide  
6 rates fell to levels in some instances even lower than those which had prevailed in  
7 the early and mid-eighteenth century. By the 1820s, rates had fallen to 3 per  
8 100,000 adults per year in Cleveland and Philadelphia, to 2 per 100,000 in rural  
9 Ohio, and to 0.5 per 100,000 in northern New England. Only New York City stood  
10 out, at 6 per 100,000 adults per year.<sup>33</sup> And the proportion of domestic and  
11 nondomestic homicides committed with firearms was correspondingly low—  
12 between 0 and 10 percent—because people once again generally refrained, as they  
13 had from the Glorious Revolution through the French and Indian War, from going  
14 about armed, except to hunt, control vermin, or serve in the militia.<sup>34</sup>

15 \_\_\_\_\_  
16 *the Hudson River Valley in the American War for Independence* (New York: W. W.  
17 Norton, 2016), 137-138; John B. Frantz and William Pencak, eds., *Beyond*  
18 *Philadelphia: The American Revolution in the Pennsylvania Hinterland* (University  
19 Park: Pennsylvania State University Press, 1998), 42-43, 141-145, 149-152; Francis  
20 S. Fox, *Sweet Land of Liberty: the Ordeal of the American Revolution in*  
21 *Northampton County, Pennsylvania* (University Park: Pennsylvania State  
University Press, 2000), 25-27, 32, 64-65, 91-92, 114; and Fox Butterfield, *All*  
*God's Children: The Bosket Family and the American Tradition of Violence* (New  
York: Vintage, 1996), 3-18.

22 <sup>32</sup> Roth, “Why Guns Are and Aren’t the Problem,” 119-120.

23 <sup>33</sup> Roth, *American Homicide*, 180, 183-186; and Eric H. Monkkonen, *Murder*  
24 *in New York City* (Berkeley: University of California Press, 2001), 15-16.

25 <sup>34</sup> For detailed figures and tables on weapons use in homicides by state, city,  
26 or county, see Roth, “American Homicide Supplemental Volume: Weapons,”  
27 available through the Historical Violence Database, sponsored by the Criminal  
28 Justice Research Center at the Ohio State University  
(<https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-Weapons-10-2009.pdf>). On  
weapons use in homicides in the North, see Figures 25 through 46.

1           21. The keys to these low homicide rates and low rates of gun violence in  
2 New England, the Mid-Atlantic states, and the settled Midwest were successful  
3 nation-building and the degree to which the promise of the democratic revolution  
4 was realized. Political stability returned, as did faith in government and a strong  
5 sense of patriotic fellow feeling, as the franchise was extended and political  
6 participation increased.<sup>35</sup> And self-employment—the bedrock of citizenship, self-  
7 respect, and respect from others—was widespread. By 1815, roughly 80 percent of  
8 women and men owned their own homes and shops or farms by their mid-thirties;  
9 and those who did not were often white-collar professionals who also received  
10 respect from their peers.<sup>36</sup> African Americans still faced discrimination and limits  
11 on their basic rights in most Northern states. But despite these barriers, most  
12 African Americans in the North were optimistic, after slavery was abolished in the  
13 North, about earning their own living and forming their own churches and  
14 voluntary organizations.<sup>37</sup>

15           22. That is why there was little interest among public officials in the North  
16 in restricting the use of firearms during the Early National period, except in duels.  
17 They took a strong stand against dueling in the wake of Alexander Hamilton's  
18  
19  
20

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21           <sup>35</sup> Roth, *American Homicide*, 180, 183-186.

22           <sup>36</sup> *Ibid.*, 180, 183-186.

23           <sup>37</sup> *Ibid.*, 181-182, 195-196; Leon F. Litwack, *North of Slavery: The Negro in*  
24 *the Free States, 1790-1860* (Chicago: University of Chicago Press, 1961); Joanne  
25 Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New*  
26 *England, 1780-1860* (Ithaca: Cornell University Press, 1998); Sean White,  
27 *Somewhat More Independent: The End of Slavery in New York City, 1780-1810*  
28 *(Athens: University of Georgia Press, 1991); and Graham R. Hodges, Root and*  
*Branch: African Americans in New York and East Jersey, 1613-1863* (Chapel Hill:  
University of North Carolina Press, 1999).

1 death, because of the threat the practice posed for the nation's democratic polity  
2 and the lives of public men: editors, attorneys, military officers, and politicians.<sup>38</sup>

3 23. Laws restricting the everyday use of firearms did appear, however, in  
4 the early national period in a number of slave states,<sup>39</sup> where violence among  
5 citizens increased after the Revolution to extremely high levels. Revolutionary  
6 ideas and aspirations wreaked havoc on the status hierarchy of the slave South,  
7 where homicide rates ranged from 8 to 28 per 100,000 adults per year.<sup>40</sup> Poor and  
8 middle-class whites were increasingly frustrated by their inability to rise in a  
9 society that remained class-bound and hierarchical.<sup>41</sup> Prominent whites were  
10 subjected to the rough and tumble of partisan politics and their position in society  
11 was threatened by people from lower social positions.<sup>42</sup> African Americans  
12 despaired over the failure of the abolition movement in the South, and whites were  
13 more fearful than ever of African American rebellion.<sup>43</sup> As a result, impatience  
14 with restraint and sensitivity to insult were more intense in the slave South, and  
15 during this period the region saw a dramatic increase in the number of deadly  
16 quarrels, property disputes, duels, and interracial killings.<sup>44</sup> The violence spread to

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17 <sup>38</sup> Joanne B. Freeman, *Affairs of Honor: National Politics in the New*  
18 *Republic* (New Haven: Yale University Press, 2001); and C. A. Harwell, "The End  
19 of the Affair? Anti-Dueling Laws and Social Norms in Antebellum America,"  
20 *Vanderbilt Law Review* 54 (2001): 1805-1847  
21 (<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1884&context=vlr>).

22 <sup>39</sup> Clayton E. Cramer, *Concealed Weapons Laws of the Early Republic:*  
23 *Dueling, Southern Violence, and Moral Reform* (Westport, Connecticut: Praeger,  
24 1999); and Cornell, *Well-Regulated Militia*, 141-144.

25 <sup>40</sup> Roth, *American Homicide*, 180, 199-203.

26 <sup>41</sup> *Ibid.*, 182.

27 <sup>42</sup> *Ibid.*

28 <sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, 182, 199-203.

1 frontier Florida and Texas, as well as to southern Illinois and Indiana—wherever  
2 Southerners settled in the early national period.<sup>45</sup> During the Early National period,  
3 the proportion of homicides committed with firearms went up accordingly, to a  
4 third or two-fifths, as Southerners armed themselves in anticipation of trouble, or  
5 set out to cause trouble.<sup>46</sup>

6 24. Citizens and public officials in these states recognized that concealable  
7 weapons—pistols, folding knives, dirk knives, and Bowie knives—were used in an  
8 alarming proportion of the era’s murders and serious assaults.<sup>47</sup> They were used to  
9 ambush both ordinary citizens and political rivals, to bully or intimidate law-  
10 abiding citizens, and to seize the advantage in fist fights. As the Grand Jurors of  
11 Jasper County, Georgia, stated in a plea to the state legislature in 1834 for  
12 restrictions on concealable weapons,

13 The practice which is common amongst us with the young the middle  
14 aged and the aged to arm themselves with Pistols, dirks knives sticks &  
15 spears under the specious pretence of protecting themselves against  
16 insult, when in fact being so armed they frequently insult others with  
17 impunity, or if resistance is made the pistol dirk or club is immediately  
18 resorted to, hence we so often hear of the stabbing shooting & murdering  
19 so many of our citizens.<sup>48</sup>  
20

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21 <sup>45</sup> Ibid., 162, 180-183, 199-203; Roth and James M. Denham, “Homicide in  
22 Florida, 1821-1861,” *Florida Historical Quarterly* 86 (2007): 216-239; John Hope  
23 Franklin, *The Militant South, 1800-1861* (Cambridge: Belknap Press of Harvard  
24 University Press, 1961); and Bertram Wyatt-Brown, *Southern Honor: Ethics and  
Behavior in the Old South* (New York: Oxford University Press, 1982).

25 <sup>46</sup> Roth, “American Homicide Supplemental Volume: Weapons,” Figures 51  
through 57.

26 <sup>47</sup> Roth, *American Homicide*, 218.

27 <sup>48</sup> Ibid., 218-219. See also the concerns of the Grand Jurors of Wilkes  
28 County, Georgia, Superior Court Minutes, July 1839 term.

1 The justices of the Louisiana Supreme Court echoed these sentiments—“unmanly”  
2 men carried concealed weapons to gain “secret advantages” over their adversaries.<sup>49</sup>  
3 These concealed weapons laws were notably difficult to enforce, however, and did  
4 not address underlying factors that contributed to rising homicide rates.  
5 Nevertheless, these laws represent governmental efforts at that time to address the  
6 use of new weapons in certain types of crime.

7 25. The pistols of the early national period represented a technological  
8 advance. Percussion-lock mechanisms enabled users to extend the life of a charge,  
9 because unlike flint-lock mechanisms, they did not use hydroscopic black powder  
10 in their priming pans; they used a sealed mercury-fulminate cap as a primer and  
11 seated it tightly on a small nipple (with an inner diameter the size of a medium  
12 sewing needle) at the rear of the firing chamber, which restricted the flow of air and  
13 moisture to the chamber. Percussion cap pistols, which replaced flint-lock pistols  
14 in domestic markets by the mid-1820s, could thus be kept loaded and carried  
15 around for longer periods without risk of corrosion.<sup>50</sup> The new types of knives  
16 available in this era also represented technological advances over ordinary knives  
17 because they were designed expressly for fighting. Dirks and Bowie knives had  
18 longer blades than ordinary knives, crossguards to protect the combatants’ hands,  
19 and clip points to make it easier to cut or stab opponents.<sup>51</sup>

20 26. The violence in the slave South and its borderlands, and the  
21 technological advances that exacerbated it, led to the first prohibitions against  
22 carrying certain concealable weapons, which appeared in Kentucky, Louisiana,  
23

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24 <sup>49</sup> Roth, *American Homicide*, 219.

25 <sup>50</sup> Roth, “Why Guns Are and Aren’t the Problem,” 117.

26 <sup>51</sup> Harold L. Peterson, *American Knives: The First History and Collector’s*  
27 *Guide* (New York: Scribner, 1958), 25-70; and Peterson, *Daggers and Fighting*  
28 *Knives in the Western World, from the Stone Age till 1900* (New York: Walker,  
1968), 67-80.



1 Indiana, Arkansas, Georgia, and Virginia between 1813 and 1838. These laws  
2 differed from earlier laws that restricted access to arms by Native Americans or by  
3 free or enslaved African Americans, because they applied broadly to *everyone* but  
4 also applied more *narrowly* to certain types of weapons and to certain types of  
5 conduct. Georgia’s 1837 law “against the unwarrantable and too prevalent use of  
6 deadly weapons” was the most restrictive. It made it unlawful for merchants

7 and any other person or persons whatsoever, to sell, or offer to sell, or to  
8 keep, or have about their person or elsewhere . . . Bowie, or any other  
9 kind of knives, manufactured or sold for the purpose of wearing, or  
10 carrying the same as arms of offence or defence, pistols, dirks, sword  
canes, spears, &c.

11 The sole exceptions were horseman’s pistols—large weapons that were difficult to  
12 conceal and were favored by travelers. But the laws in the other five states were  
13 also strict: they forbid the carrying of concealable weapons in all circumstances.  
14 Indiana made an exemption for travelers.<sup>52</sup>

15 27. Thus, during the lifetimes of Jefferson, Adams, Marshall, and  
16 Madison, the Founding Generation passed laws in a number of states that restricted  
17 the use or ownership of certain types of weapons after it became obvious that those  
18 weapons, including certain fighting knives and percussion-cap pistols, were being  
19

20  
21  
22 <sup>52</sup> Cramer, *Concealed Weapons Laws*, especially 143-152, for the texts of  
23 those laws. Alabama and Tennessee prohibited the concealed carrying of fighting  
24 knives, but not pistols. See also the Duke Center for Firearms Law, Repository of  
25 Historical Gun Laws ([https://firearmslaw.duke.edu/search-](https://firearmslaw.duke.edu/search-results/?_sft_subjects=dangerous-or-unusual-weapons)  
26 [results/?\\_sft\\_subjects=dangerous-or-unusual-weapons](https://firearmslaw.duke.edu/search-results/?_sft_subjects=dangerous-or-unusual-weapons)), accessed September 9,  
27 2022). Note that the Georgia Supreme Court, in *Nunn v. State*, 1 Ga. 243 (1846),  
28 held that prohibiting the concealed carry of certain weapons was valid, but that the  
state could not also prohibit open carry, which would destroy the right to bear arms.  
That decision put Georgia in line with the five other states that had prohibited the  
carrying of concealable firearms.



1 used in crime by people who carried them concealed on their persons and were thus  
2 contributing to rising crime rates.<sup>53</sup>

3 **C. Homicide, Concealable Weapons, and Concealable Weapons**  
4 **Regulations from the Mexican War through the Early**  
5 **Twentieth Century (1846-1920s)**

6 28. By the early twentieth century, every state except Vermont either  
7 banned concealed firearms or placed severe restrictions on their possession.<sup>54</sup> They  
8 did so in response to two developments: the nationwide surge in homicide rates,  
9 from the North and South to the Trans-Mississippi West; and the invention of new  
10 firearms, especially the revolver, which enabled the firing of multiple rounds in  
11 succession without reloading and made the homicide problem worse. Between the  
12 mid-nineteenth and the early twentieth century homicide rates fell in nearly every  
13 Western nation.<sup>55</sup> But in the late 1840s and 1850s those rates exploded across the

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14 <sup>53</sup> Cramer, *Concealed Weapons Laws*, 69-96; Cramer, *For the Defense of*  
15 *Themselves and the State: The Original Intent and Judicial Interpretation of the*  
16 *Right to Keep and Bear Arms* (Westport, Connecticut: Praeger Publishers, 1994);  
17 Don B. Kates, Jr., "Toward a History of Handgun Prohibition in the United States,"  
18 in Cates, ed., *Restricting Handguns: The Liberal Skeptics Speak Out* (Croton-on-  
19 Hudson, New York: North River Press, 1979), 7-30; and Philip D. Jordan, *Frontier*  
20 *Law and Order—10 Essays* (Lincoln: University of Nebraska Press, 1970), 1-22.  
21 Thomas Jefferson and John Adams died on July 4, 1826, John Marshall on July 6,  
22 1835, and James Madison on July 28, 1836. On the history of firearms regulations  
23 that pertained to African Americans, see Robert J. Cottrol and Raymond T.  
24 Diamond, "The Second Amendment: Toward an Afro-Americanist  
25 Reconsideration," *Georgetown Law Journal* 80 (1991): 309-361  
26 ([https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&art](https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1283&context=faculty_scholarship)  
27 [icle=1283&context=faculty\\_scholarship](https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1283&context=faculty_scholarship)); Cottrol and Diamond, "Public Safety and  
28 the Right to Bear Arms" in David J. Bodenhamer and James W. Ely, Jr., eds., *The*  
*Bill of Rights in Modern America*, revised and expanded (Bloomington: Indiana  
University Press, 2008), 88-107; and Cramer, *For the Defense of Themselves and*  
*the State*, 74, 83-85, 97-140.

<sup>54</sup> Kates, "Toward a History of Handgun Prohibition," 7-30; and Jordan,  
*Frontier Law and Order*, 17-22.

<sup>55</sup> Roth, *American Homicide*, 297-300.

1 United States and spiked even higher during the Civil War and Reconstruction, not  
 2 only in the South and the Southwest, where rates had already risen in the early  
 3 national period, but in the North. Americans, especially men, were more willing to  
 4 kill friends, acquaintances, and strangers. And so, the United States became—and  
 5 remains today—by far the most murderous affluent society in the world.<sup>56</sup>

6 29. The increase occurred because America's heretofore largely successful  
 7 effort at nation-building failed catastrophically at mid-century.<sup>57</sup> As the country  
 8 struggled through the wrenching and divisive changes of the mid-nineteenth  
 9 century—the crises over slavery and immigration, the decline in self-employment,  
 10 and rise of industrialized cities—the patriotic faith in government that most  
 11 Americans felt so strongly after the Revolution was undermined by anger and  
 12 distrust.<sup>58</sup> Disillusioned by the course the nation was taking, people felt  
 13 increasingly alienated from both their government and their neighbors.<sup>59</sup> They  
 14 were losing the sense that they were participating in a great adventure with their  
 15 fellow Americans.<sup>60</sup> Instead, they were competing in a cutthroat economy and a  
 16 combative political system against millions of strangers whose interests and values  
 17 were antithetical to their own.<sup>61</sup> And most ominously, law and order broke down in  
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19 <sup>56</sup> Ibid., 297-300.

20 <sup>57</sup> Ibid., 299-302, 384-385; and Roth, "American Homicide: Theory,  
 21 Methods, Body Counts," *Historical Methods* 43 (2010): 185-192.

22 <sup>58</sup> Roth, *American Homicide*, 299-302, 384-385. See also Randolph Roth,  
 23 "Measuring Feelings and Beliefs that May Facilitate (or Deter) Homicide,"  
 24 *Homicide Studies* (2012) 16: 196-217  
 25 ([https://journals.sagepub.com/doi/pdf/10.1177/1088767912442501?casa\\_token=dkP\\_nZZxCaYAAAAA:vL522E2inh9U2gr4X2qAhPnqRminWEjLv8nbwrNEhqNpRliTesFI\\_1SDY6tepvZbjwiRWPEom7M](https://journals.sagepub.com/doi/pdf/10.1177/1088767912442501?casa_token=dkP_nZZxCaYAAAAA:vL522E2inh9U2gr4X2qAhPnqRminWEjLv8nbwrNEhqNpRliTesFI_1SDY6tepvZbjwiRWPEom7M)).

26 <sup>59</sup> Roth, *American Homicide*, 300.

27 <sup>60</sup> Ibid.

28 <sup>61</sup> Ibid.

1 the wake of the hostile military occupation of the Southwest, the political crisis of  
2 the 1850s, the Civil War, and Reconstruction.<sup>62</sup>

3 30. The proportion of homicides committed with firearms increased as  
4 well from the Mexican War through Reconstruction, as it had during previous  
5 increases in nondomestic homicides during the Revolution, in the postrevolutionary  
6 South, and on contested frontiers.<sup>63</sup> Because the pistols, muskets, and rifles in use  
7 in the early years of the crisis of the mid-nineteenth century were still  
8 predominantly single-shot, muzzle-loading, black powder weapons, the proportion  
9 of homicides committed with guns stayed in the range of a third to two-fifths,  
10 except on the frontier.<sup>64</sup> Concealable fighting knives, together with concealable  
11 percussion-cap pistols, remained the primary murder weapons. But in time, new  
12 technologies added to the toll in lives, because of their lethality and the new ways  
13 in which they could be used.

14 31. Samuel Colt's cap-and-ball revolvers, invented in 1836, played a  
15 limited role in the early years of the homicide crisis, but they gained popularity  
16 quickly because of their association with frontiersmen, Indian fighters, Texas  
17 Rangers, and cavalymen in the Mexican War.<sup>65</sup> They retained some of the  
18 limitations of earlier firearms, because their rotating cylinders—two of which came  
19 with each revolver—had to be loaded one chamber at a time. Users had to seat a  
20 percussion cap on a nipple at the rear of each chamber, pour powder into each  
21 chamber, secure the powder with wadding, and ram the bullet down the chamber  
22 with a rod or an attached loading lever. Thus cap-and-ball revolvers, like muzzle-

23  
24 <sup>62</sup> Ibid., 299-302, 332, 337, 354.

25 <sup>63</sup> Roth, "Why Guns Are and Aren't the Problem," 116-117.

26 <sup>64</sup> Roth, "American Homicide Supplemental Volume: Weapons," Figures 25  
27 through 46, and 51 through 57.

28 <sup>65</sup> Patricia Haag, *The Gunning of America: Business and the Making of  
American Gun Culture* (New York: Basic Books, 2016).

1 loaders, could not be loaded quickly, nor could they be kept loaded indefinitely  
2 without risk of damaging the charge or the gun. But they were deadlier than their  
3 predecessors, because they made it possible for a person to fire five or six shots in  
4 rapid succession and to reload quickly with the second cylinder.<sup>66</sup>

5 32. Smith and Wesson's seven-shot, .22 caliber, breech-loading, Model 1  
6 rimfire revolver, invented in 1857, appeared on the market when the homicide crisis  
7 was already well underway. But it had none of the limitations of percussion-cap  
8 pistols or cap-and-ball revolvers. It could be loaded quickly and easily because it  
9 did not require powder, wadding, and shot for each round; and it could be kept  
10 loaded indefinitely because its corrosive powder was encapsulated in the bullet.<sup>67</sup>  
11 And it did not require a new percussion cap for each chamber, because the primer  
12 was located in a rim around the base of the bullet, set to ignite as soon as it was hit  
13 by the hammer.<sup>68</sup> As Smith and Wesson noted in its advertisements,

14 Some of the advantages of an arm constructed on this plan are:

15 The convenience and safety with which both the arm and ammunition  
16 may be carried;

17 The facility with which it may be charged, (it requiring no ramrod,  
18 powder-flask, or percussion caps);

19 Certainty of fire in damp weather;

20  
21 <sup>66</sup> Edward C. Ezell, *Handguns of the World: Military Revolvers and Self-*  
22 *Loaders from 1870 to 1945* (Harrisburg, Pennsylvania: Stackpole Books, 1981), 24-  
23 28; Julian S. Hatcher, *Pistols and Revolvers and Their Use* (Marshallton, Delaware:  
24 Small-Arms Technical Publishing Company, 1927), 8-11; and Charles T. Haven  
25 and Frank A. Belden, *A History of the Colt Revolver and the Other Arms Made by*  
26 *Colt's Patent Fire Arms Manufacturing Company from 1836 to 1940* (New York:  
27 Bonanza Books, 1940), 17-43.

28 <sup>67</sup> Roy G. Jinks, *History of Smith and Wesson* (North Hollywood: Beinfeld,  
1977), 38-57.

<sup>68</sup> *Ibid.*, 38-57.

1 That no injury is caused to the arm or ammunition by allowing it to  
2 remain charged any length of time.<sup>69</sup>

3 33. Smith and Wesson had created a near-perfect murder weapon. It was  
4 lethal, reliable, easy to carry and conceal, capable of multiple shots, and ready to  
5 use at any time.<sup>70</sup> Its only drawbacks were its small caliber and low muzzle  
6 velocity, which limited its ability to stop an armed or aggressive adversary on the  
7 first shot, and the difficulty and danger of reloading. The reloading problem was  
8 remedied by Colt's development in 1889 of the first double-action commercial  
9 revolver with a swing-out cylinder and Smith and Wesson's addition in 1896 of an  
10 ejector to push out spent cartridges.<sup>71</sup>

11 34. These new weapons were not the primary cause of the surge in  
12 violence that occurred in the United States from the Mexican War through  
13 Reconstruction. But they did contribute to the later stages of the crisis, as they  
14 superseded knives and black powder handguns as the primary weapons used in  
15 interpersonal assaults, not only because of their greater lethality, but because they  
16 were used in novel ways.<sup>72</sup> Easily concealed, they became the weapons of choice  
17 for men who stalked and ambushed estranged spouses or romantic partners, for  
18 suspects who killed sheriffs, constables, or police officers, and for self-styled  
19

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20 <sup>69</sup> Ibid., 39.

21 <sup>70</sup> Ibid., 38-57.

22 <sup>71</sup> Rick Sapp, *Standard Catalog of Colt Firearms* (Cincinnati: F+W Media,  
23 2011), 96; Jeff Kinard, *Pistols: An Illustrated History of Their Impact* (Santa  
24 Barbara: ABC-CLIO, 2003), 163; and Jinks, *History of Smith and Wesson*, 104-170.

25 <sup>72</sup> Roth, "Why Guns Are and Aren't the Problem," 124-126 (recognizing that  
26 "Americans used the new firearms in ways they could never use muzzle-loading  
27 guns [. . .] The ownership of modern breech-loading [firearms] made the homicide  
28 rate worse in the United States than it would have been otherwise because it  
facilitated the use of *lethal* violence in a *wide variety of circumstances*." (emphasis  
added).

1 toughs who engaged in shootouts in bars, streets, and even churchyards.<sup>73</sup> And as  
 2 modern, breech-loading firearms replaced the muzzle-loading and cap-and-ball  
 3 gunstock from the late 1850s through World War I, the proportion of homicides  
 4 committed with firearms continued to climb even when homicide rates fell for a  
 5 short time, as they did at the end of Reconstruction.<sup>74</sup> Ominously, too, firearms  
 6 invaded families and intimate relationships, so relatives, spouses, and lovers were  
 7 as likely to be killed with guns as unrelated adults—something that had never  
 8 happened before in America’s history.<sup>75</sup> That is why the proportion of homicides  
 9 committed with firearms—overwhelmingly, concealed revolvers—reached today’s  
 10 levels by the 1920s, ranging from a median of 56 percent in New England and over  
 11 70 percent in the South and West.<sup>76</sup> And that is why every state in the Union  
 12 except one restricted the right to carrying certain concealable weapons. The lone  
 13 holdout was Vermont, the state with the lowest homicide rate.<sup>77</sup>

14 35. It is important to note that state legislators experimented with various  
 15 degrees of firearm regulation, as the nation became more and more violent. In  
 16 Texas, where the homicide rate soared to at least 76 per 100,000 adults per year  
 17 from June, 1865, to June, 1868,<sup>78</sup> the legislature passed a time-place-manner  
 18 restriction bill in 1870 to prohibit the open or concealed carry of a wide range of

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20 <sup>73</sup> Ibid., 124-125.

21 <sup>74</sup> Ibid., 125-127.

22 <sup>75</sup> Ibid., 125.

23 <sup>76</sup> Roth, “American Homicide Supplemental Volume: Weapons,” Figures 2  
 through 7.

24 <sup>77</sup> Roth, *American Homicide*, 184; and Horace V. Redfield, *Homicide, North*  
 25 *and South: Being a Comparative View of Crime against the Person in Several Parts*  
 26 *of the United States* (Columbus: Ohio State University Press, 2000).

27 <sup>78</sup> Roth, Michael D. Maltz, and Douglas L. Eckberg, “Homicide Rates in the  
 28 Old West,” *Western Historical Quarterly* 42 (2011): 192  
[https://www.jstor.org/stable/westhistquar.42.2.0173#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/westhistquar.42.2.0173#metadata_info_tab_contents)).



1 weapons, including firearms, on social occasions,<sup>79</sup> and it followed in 1871 with a  
2 bill banning in most circumstances the carrying, open or concealed, of small deadly  
3 weapons, including pistols, that were not designed for hunting or militia service.<sup>80</sup>

4  
5 <sup>79</sup> Brennan Gardner Rivas, “Enforcement of Public Carry Restrictions: Texas  
6 as a Case Study,” *UC Davis Law Review* 55 (2021): 2609-2610  
7 ([https://lawreview.law.ucdavis.edu/issues/55/5/articles/files/55-5\\_Rivas.pdf](https://lawreview.law.ucdavis.edu/issues/55/5/articles/files/55-5_Rivas.pdf)). “Be it  
8 enacted by the Legislature of the State of Texas, That if any person shall go into  
9 any church or religious assembly, any school room or other place where persons are  
10 assembled for educational, literary or scientific purposes, or into a ball room, social  
11 party or other social gathering composed of ladies and gentlemen, or to any election  
12 precinct on the day or days of any election, where any portion of the people of this  
13 State are collected to vote at any election, or to any other place where people may  
14 be assembled to muster or perform any other public duty, or any other public  
15 assembly, and shall have about his person a bowie-knife, dirk or butcher-knife, or  
16 fire-arms, whether known as a six-shooter, gun or pistol of any kind, such person so  
17 offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall  
18 be fined in a sum not less than fifty or more than five hundred dollars, at the  
19 discretion of the court or jury trying the same; provided, that nothing contained in  
20 this section shall apply to locations subject to Indian depredations; and provided  
21 further, that this act shall not apply to any person or persons whose duty it is to bear  
22 arms on such occasions in discharge of duties imposed by law.” An Act Regulating  
23 the Right to Keep and Bear Arms, 12th Leg., 1st Called Sess., ch. XLVI, § 1, 1870  
24 Tex. Gen. Laws 63. See also Brennan Gardner Rivas, “The Deadly Weapon Laws  
25 of Texas: Regulating Guns, Knives, and Knuckles in the Lone Star State, 1836-  
26 1930” (Ph.D. dissertation: Texas Christian University, 2019)  
27 (<https://repository.tcu.edu/handle/116099117/26778>).

28 <sup>80</sup> Rivas, “Enforcement of Public Carry Restrictions,” 2610-2611. Rivas,  
quoting the law, says that “The first section stated, ‘That any person carrying on or  
about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot,  
sword-cane, spear, brass-knuckles, bowie knife, or any other kind of knife  
manufactured or sold for the purposes of offense or defense, unless he has  
reasonable grounds for fearing an unlawful attack on his person, and that such  
ground of attack shall be immediate and pressing; or unless having or carrying the  
same on or about his person for the lawful defense of the State, as a militiaman in  
actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor,  
and, on conviction thereof shall, for the first offense, be punished by fine of not less  
than twenty-five nor more than one hundred dollars, and shall forfeit to the county  
the weapon or weapons so found on or about his person; and for every subsequent  
(continued...)



1  
2  
3  
4 offense may, in addition to such fine and forfeiture, be imprisoned in the county jail  
5 for a term not exceeding sixty days; and in every case of fine under this section the  
6 fines imposed and collected shall go into the treasury of the county in which they  
7 may have been imposed; provided that this section shall not be so construed as to  
8 prohibit any person from keeping or bearing arms on his or her own premises, or at  
9 his or her own place of business, nor to prohibit sheriffs or other revenue officers,  
10 and other civil officers, from keeping or bearing arms while engaged in the  
11 discharge of their official duties, nor to prohibit persons traveling in the State from  
12 keeping or carrying arms with their baggage; provided, further, that members of the  
13 Legislature shall not be included under the term “civil officers” as used in this act.’  
14 An Act to Regulate the Keeping and Bearing of Deadly Weapons, 12th Leg. Reg.  
15 Sess., ch. XXXIV, § 1, 1871 Tex. Gen. Laws 25. The third section of the act reads,  
16 ‘If any person shall go into any church or religious assembly, any school room, or  
17 other place where persons are assembled for amusement or for educational or  
18 scientific purposes, or into any circus, show, or public exhibition of any kind, or  
19 into a ball room, social party, or social gathering, or to any election precinct on the  
20 day or days of any election, where any portion of the people of this State are  
21 collected to vote at any election, or to any other place where people may be  
22 assembled to muster, or to perform any other public duty, (except as may be  
23 required or permitted by law,) or to any other public assembly, and shall have or  
24 carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword  
25 cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured  
26 and sold for the purposes of offense and defense, unless an officer of the peace, he  
27 shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first  
28 offense, be punished by fine of not less than fifty, nor more than five hundred  
dollars, and shall forfeit to the county the weapon or weapons so found on his  
person; and for every subsequent offense may, in addition to such fine and  
forfeiture, be imprisoned in the county jail for a term not more than ninety days.’  
Id. § 3.” The law did not apply, however, ‘to a person’s home or business, and  
there were exemptions for “peace officers” as well as travelers; lawmakers and  
jurists spent considerable time fleshing out who qualified under these exemptions,  
and how to allow those fearing an imminent attack to carry these weapons in public  
spaces. Also, the deadly weapon law did not apply to all guns or firearms but just  
pistols. The time-place-manner restrictions, however, applied to any “fire-arms . . .  
gun or pistol of any kind” and later “pistol or other firearm,” as well as “any gun,  
pistol . . . .”’

1 These laws were enforced with little or no racial bias until the 1890s, when white  
2 supremacists disfranchised African Americans, legalized segregation, and took firm  
3 control of the courts and law enforcement.<sup>81</sup>

4 36. California's legislature, recognizing that the homicide rate had reached  
5 catastrophic levels (over 65 per 100,000 adults per year),<sup>82</sup> banned concealed  
6 weapons in 1863, because, as the editor of the *Daily Alta Californian* declared,

7 During the thirteen years that California has been a State, there have been  
8 more deaths occasioned by sudden assaults with weapons previously  
9 concealed about the person of the assailant or assailed, than by all other  
10 acts of violence which figure on the criminal calendar.... For many  
11 sessions prior to the last, ineffectual efforts were made to enact some  
12 statute which would effectually prohibit this practice of carrying  
13 concealed weapons. A radical change of public sentiment demanded it,  
14 but the desired law was not passed until the last Legislature, by a  
15 handsome majority.<sup>83</sup>

16 37. But the legislature repealed the law in 1870, as public sentiment  
17 veered back toward the belief that the effort to make California less violent was  
18 hopeless, and that the only protection law-abiding citizens could hope for was to  
19 arm themselves. And the legislature once again had the enthusiastic support of the

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20 <sup>81</sup> Rivas, "Enforcement of Public Carry Restrictions," 2609-2620. The study  
21 draws on enforcement data from four Texas counties, 1870-1930: 3,256 total cases,  
22 of which 1,885 left a record of final adjudication.

23 <sup>82</sup> Roth, Maltz, and Eckberg, "Homicide Rates in the Old West," 183. On  
24 violence in California and across the Far West, see Roth, Maltz, and Eckberg,  
25 "Homicide Rates in the Old West," 173-195; Clare V. McKanna, Jr., *Homicide,  
26 Race, and Justice in the American West, 1880-1920* (Tucson: University of Arizona  
27 Press, 1997); McKanna, *Race and Homicide in Nineteenth-Century California*  
28 (Reno: University of Nevada Press, 2002); and John Mack Faragher, *Eternity  
Street: Violence and Justice in Frontier Los Angeles* (New York: W. W. Norton,  
2016); and Roth, *American Homicide*, 354.

<sup>83</sup> Clayton E. Cramer and Joseph Olson, "The Racist Origins of California's  
Concealed Weapon Permit Law," Social Science Research Network, posted August  
12, 2016, 6-7 ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2599851](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2599851)).

1 editor of the *Daily Alta Californian*, which then opined, “As the sovereignty resides  
2 in the people in America, they are to be permitted to keep firearms and other  
3 weapons and to carry them at their pleasure.”<sup>84</sup> A number of counties dissented,  
4 however, and made it a misdemeanor to carry a concealed weapon without a  
5 permit—ordinances that they enforced.<sup>85</sup> In 1917, the state made it a misdemeanor  
6 to carry a concealed weapon in incorporated cities and required that gun dealers  
7 register handgun sales and send the Dealer’s Record of Sale to local law  
8 enforcement.<sup>86</sup> And in 1923, the state extended the licensing requirement to  
9 unincorporated areas and prohibited non-citizens from carrying concealed  
10 weapons.<sup>87</sup>

11 38. Other states, like Ohio, tried to have it both ways. The Ohio  
12 legislature banned the carrying of concealable weapons in 1859, citing public  
13 safety. But it directed jurors, in the same law, to acquit persons who carried such  
14 weapons,

15 If it shall be proved to the jury, from the testimony on the trial of any  
16 case presented under the first section of this act, that the accused was, at  
17 the time of carrying any of the weapon or weapons aforesaid, engaged in  
18 the pursuit of any lawful business, calling, or employment, and that the  
19 circumstances in which he was placed at the time aforesaid were such as  
20 to justify a prudent man in carrying the weapon or weapons aforesaid for  
the defense of his person, property or family.<sup>88</sup>

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21 <sup>84</sup> Cramer and Olson, “Racist Origins of California’s Concealed Weapon  
22 Permit Law,” 7-10.

23 <sup>85</sup> Ibid., 11.

24 <sup>86</sup> Ibid., 11-13.

25 <sup>87</sup> Ibid., 13-15. Note that the title of the Cramer and Olson essay is  
26 misleading. It does not refer to the origins of the laws discussed here or to the ways  
in which they were enforced. It refers instead to an unsuccessful effort in 1878 and  
a successful effort in 1923 to deny resident aliens the right to bear arms.

27 <sup>88</sup> Joseph R. Swan, *The Revised Statutes of the State of Ohio, of a General*  
28 *Nature, in Force August 1, 1860* (Cincinnati: Robert Clarke & Co., 1860), 452.

1 The burden of proof remained with the person who carried the concealed weapon.

2 39. It is important to remember, however, that even when states enacted  
3 different types of firearms restrictions, the fact remains that many jurisdictions  
4 enacted statutory restrictions at that time to ensure the safety of the public and law  
5 enforcement.

6 **III. ADDRESSING THREATS TO THE REPUBLIC AND ITS CITIZENS FROM**  
7 **MASS MURDERERS FROM THE REVOLUTION INTO THE EARLY**  
8 **TWENTIETH CENTURY**

9 40. The Republic faced threats not only from individual murderers, but  
10 from groups of murderers. Mass murder has been a fact of life in the United States  
11 since the mid-nineteenth century, when lethal and nonlethal violence of all kinds  
12 became more common. But mass murder was a group activity through the  
13 nineteenth century because of the limits of existing technologies.<sup>89</sup> The only way to  
14 kill a large number of people was to rally like-minded neighbors and go on a  
15 rampage with clubs, knives, nooses, pistols, shotguns, or rifles—weapons that were  
16 certainly lethal but did not provide individuals or small groups of people the means  
17 to inflict mass casualties on their own. Mass killings of this type were rare in the  
18 colonial, Revolutionary, and Early National eras, outside of massacres of Native  
19 Americans or irregular warfare among citizens seeking political power.<sup>90</sup> But from  
20 the 1830s into the early twentieth century, mass killings were common.

21 <sup>89</sup> On the history of mob violence, including riots and popular protests that  
22 led to mass casualties, see Paul A. Gilje, *Rioting in America* (Bloomington: Indiana  
23 University Press, 1996); and David Grimsted, *American Mobbing: Toward Civil  
War* (New York: Oxford University Press, 1996).

24 <sup>90</sup> For examples of massacres of unarmed Native Americans, see the murder  
25 in 1623 of six Massachusetts men by a party from Plymouth Colony, led by Captain  
26 Miles Standish [Roth, *American Homicide*, 42]; and the massacre in 1782 of 96  
27 pacifist Moravian Delaware Indians at Gnadenhutten in present-day Ohio [Rob  
28 Harper, “Looking the Other Way: The Gnadenhutten Massacre and the Contextual  
Interpretation of Violence,” *William and Mary Quarterly* (2007) 64: 621-644  
([https://www.jstor.org/stable/25096733#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/25096733#metadata_info_tab_contents))]. For

(continued...)

41. Examples include Nat Turner's rebellion in Southampton County, Virginia, in 1831, which claimed sixty-nine lives; the murder of seventeen Mormons, perpetrated by militia men and vigilantes at Haun's Mill, Missouri in 1838; Bloody Monday in Louisville, Kentucky, where an assault by nativist Protestants on Irish and German Catholics in 1855 left twenty-two people dead; and the murder of nineteen Chinese Americans by a racist mob in Los Angeles in 1871. Because these mass killings were almost always spontaneous and loosely organized, they were difficult for government to prevent. Worse, in some incidents, such as the Haun's Mill Massacre, state and local governments were complicit; and in others, state and local governments turned a blind eye to the slaughter, as was the case in the murder of Chinese farm workers in Chico, California, in 1877.<sup>91</sup>

examples of political conflict among colonists that led to mass killings, see the confrontation in 1655 at Severn River in Maryland between opposed factions in the English Civil War [Aubrey C. Land, *Colonial Maryland: A History* (Millwood, New York: Kato Press, 1981), 49-54] and the slaughter in 1782 of rebel prisoners at Cloud's Creek, South Carolina, by Tory partisans under the leadership of William Cunningham [J. A. Chapman, *History of Edgefield County* (Newberry, South Carolina: Elbert H. Aull, 1897), 31-34]; see also Fox Butterfield, *All God's Children: The Bosket Family and the American Tradition of Violence* (New York: Vintage, 2008), 5-6.

<sup>91</sup> David F. Almendinger, Jr., *Nat Turner and the Rising in Southampton County* (Baltimore: Johns Hopkins Press, 2014); Patrick H. Breen, *The Land Shall Be Deluged in Blood: A New History of the Nat Turner Revolt* (New York: Oxford University Press, 2015); Stephen B. Oates, *The Fires of Jubilee: Nat Turner's Fierce Rebellion* (New York: Harper and Row, 1975); Stephen C. LeSueur, *The 1838 Mormon War in Missouri* (Columbia: University of Missouri Press, 1987), 162-168; Brandon G. Kinney, *The Mormon War: Zion and the Missouri Extermination Order of 1838* (Yardley, Pennsylvania: Westholme, 2011); Mary Alice Mairose, "Nativism on the Ohio: the Know Nothings in Cincinnati and Louisville, 1853-1855" (M.A. thesis, Ohio State University, 1993); W. Eugene Hollon, *Frontier Violence: Another Look* (New York: Oxford University Press, 1974), 93-95; Faragher, *Eternity Street*, 463-480; and Sucheng Chan, *The Bitter-Sweet Soil: The Chinese in California Agriculture, 1860-1910* (Berkeley: University of California Press, 1986), 372.

1           42. The Federal government did act during Reconstruction, however, to  
2 prevent mass murder when formally organized white supremacist organizations  
3 engaged in systematic efforts to deprive African Americans of their civil rights,  
4 which had been guaranteed by the Thirteenth, Fourteenth, and Fifteenth  
5 Amendments. The Ku Klux Klan Acts of 1870 and 1871, meant to prevent  
6 assassinations and mass shootings and lynchings by white supremacist terrorists,  
7 were effective when enforced by the federal government and the U.S. Army.<sup>92</sup> But  
8 when federal troops were withdrawn, white supremacist mass killings resumed. In  
9 New Orleans, for example, an ultimately successful effort by white-supremacist  
10 Democrats to seize control of the city's government by violent means left dozens of  
11 Republican officials and police officers shot dead and scores wounded.<sup>93</sup> And the  
12 Klan Acts did nothing to prevent mass murders by spontaneous mobs and loosely  
13 organized vigilantes. Rioters and vigilantes remained a threat well into the  
14 twentieth century. In 1921 more than three hundred African American citizens  
15 were murdered in the Tulsa Race Massacre in Oklahoma.<sup>94</sup>

16  
17  
18  
19           <sup>92</sup> Alan Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (New York: Harper and Row, 1975).

20           <sup>93</sup> Dennis C. Rousey, *Policing the Southern City: New Orleans, 1805-1889*  
21 (Baton Rouge: Louisiana State University Press, 1996), 151-158. See also  
22 LeeAnna Keith, *The Colfax Massacre: The Untold Story of Black Power, White*  
23 *Terror, and the Death of Reconstruction* (New York: Oxford University Press,  
24 2008); and Gilles Vandal, *Rethinking Southern Violence: Homicides in Post-Civil*  
*War Louisiana, 1866-1884* (Columbus: Ohio State University Press, 2000), 67-109.

25           <sup>94</sup> On the deadly race riots of 1919-1921, see William M. Tuttle, Jr., *Race*  
26 *Riot: Chicago in the Red Summer of 1919* (New York: Atheneum, 1970); Scott  
27 Ellsworth, *Death in a Promised Land: The Tulsa Race Riot of 1921* (Baton Rouge:  
28 Louisiana State University Press, 1982); and Tim Madigan, *The Burning:*  
*Massacre, Destruction, and the Tulsa Race Riot of 1921* (New York: Thomas  
Dunne Books / St. Martin's Press, 2001).



1 **IV. ADDRESSING THREATS TO THE REPUBLIC AND ITS CITIZENS FROM**  
2 **MASS MURDERERS FROM THE EARLY TWENTIETH CENTURY TO THE**  
3 **PRESENT**

4 43. The character of mass murder began to change in the late nineteenth  
5 and early twentieth century with the invention and commercial availability of new  
6 technologies that gave individuals or small groups of people the power to kill large  
7 numbers of people in a short amount of time. These technologies proved useful to  
8 criminal gangs, anarchists, and factions of the labor movement intent on killing  
9 adversaries, public officials, and law enforcement officers. The technologies that  
10 were most widely used by criminals and terrorists were dynamite, invented by  
11 Alfred Nobel in 1866, and the Thompson submachine gun, invented in 1918 by  
12 General John T. Thompson, who improved upon a pioneering German design.

13 44. The advantage of dynamite over nitroglycerin and other explosives  
14 used in mining and construction was its power and its stability, which made  
15 accidental explosions rare. The advantages of submachine guns over existing  
16 machine guns as weapons of war were that they were light enough to be carried and  
17 operated by a single individual, and they were capable of firing .45 caliber bullets  
18 from 20-round clips or 50- or 100-round drum magazines at a rate of 600 to 725  
19 rounds per minute.<sup>95</sup>

20 45. Criminals and terrorists quickly discovered how accessible and useful  
21 these new technologies were. They could be purchased legally by private citizens.  
22 In the 1920s, Thompson submachine guns were expensive. They sold for \$175 to  
23 \$225 each, at a time when a new Ford cost \$440 (the rough equivalent of \$2996 to  
24 \$3852 today, when a base model of the AR-15 semiautomatic rifle can be  
25 purchased for less than \$400 and a 30-round magazine for as little as \$10).<sup>96</sup> That

26 <sup>95</sup> Herta E. Pauli, *Alfred Nobel: Dynamite King, Architect of Peace* (New  
27 York: L. B. Fisher, 1942); and Bill Yenne, *Tommy Gun: How General Thompson's  
28 Submachine Gun Wrote History* (New York: Thomas Dunne Books, 2009).

<sup>96</sup> Yenne, *Tommy Gun*, 86. Estimates vary on the purchasing power of 1919  
(continued...)



1 is why Thompsons were favored by those with resources: law enforcement, the  
2 Irish Republican Army, Sandinista rebels in Nicaragua, and bank robbers.  
3 Dynamite, however, cost only 18 cents a pound (the rough equivalent of \$3.08  
4 today), so it was favored by labor activists and anarchists.<sup>97</sup> Federal, state, and  
5 local officials and law enforcement officers suddenly confronted novel threats to  
6 their personal safety. Submachine guns were used most notoriously in gangland  
7 slayings in Chicago during the Prohibition Era, such as the St. Valentine's Day  
8 Massacre and the Kansas City Massacre.<sup>98</sup> Dynamite was used in a string of  
9 anarchist bombings in 1919-1920. Those included the murder of 38 people and the  
10 wounding of 143 in an attack on Wall Street, 36 dynamite bombs mailed to justice  
11 officials, newspaper editors, and businessmen (including John D. Rockefeller), and  
12

13  
14 dollars in today's dollars, but \$1.00 in 1919 was worth roughly \$17.12 today. See  
15 the CPI Inflation Calculator (<https://bit.ly/3CS5UNI>), accessed October 4, 2022.  
16 The prices of AR-15 style rifles today are from guns.com  
17 (<https://www.guns.com/firearms/ar-15-rifles?priceRange=%24250%20-%20%24499>),  
18 accessed October 4, 2022. The prices of 30-round magazines of  
19 .233 caliber ammunition are from gunmagwarehouse.com  
20 (<https://gunmagwarehouse.com/all-magazines/rifles/magazines/ar-15-magazines>),  
21 accessed October 4, 2022.

22 <sup>97</sup> Department of Commerce, Bureau of the Census, *Fourteenth Census of the*  
23 *United States Manufactures: Explosives* (Washington, D.C.: Government Printing  
24 Office, 1922), 6. Note that a pound of dynamite would be far more expensive  
25 today—potentially hundreds of thousands of dollars—because it would require the  
26 purchase of a blasting license, a storage bunker, and an isolated plot of land for the  
27 storage bunker. See U.S Department of Justice, Bureau of Alcohol, Tobacco,  
28 Firearms, and Explosives, Enforcement Programs and Services, *ATF Federal*  
*Explosives Law and Regulations*, 2012  
(<https://www.atf.gov/explosives/docs/report/publication-federal-explosives-laws-and-regulations-atf-p-54007/download>), accessed October 4, 2022.

<sup>98</sup> William Helmer and Arthur J. Bilek, *The St. Valentine's Day Massacre: The Untold Story of the Bloodbath That Brought Down Al Capone* (Nashville: Cumberland House, 2004); and Yenne, *Tommy Gun*, 74-78, 91-93.

1 a failed attempt to kill Attorney General A. Mitchell Palmer and his family.<sup>99</sup>  
 2 Dynamite was also used effectively for malicious, private ends. For example,  
 3 Osage Indians were murdered by an individual in Oklahoma in an attempt to gain  
 4 their headrights and profit from insurance policies on them.<sup>100</sup>

5 46. Because of the threats these new technologies posed for public safety,  
 6 public officials widened their regulatory focus beyond concealed and concealable  
 7 weapons. Thirteen states restricted the capacity of ammunition magazines for  
 8 semiautomatic and automatic firearms between 1927 and 1934,<sup>101</sup> and Congress  
 9 passed the National Firearms Acts of 1934 and 1938, which restricted ownership of  
 10 machine guns and submachine guns (known today as automatic weapons) because  
 11 of their ability to fire rapidly from large-capacity magazines.<sup>102</sup> And the Organized  
 12 Crime Control Act of 1970 restricted ownership of a wide range of explosives,

13  
 14 <sup>99</sup> Paul Avrich, *Sacco and Vanzetti: The Anarchist Background* (Princeton:  
 15 Princeton University Press, 1991), 140-156, 181-195; Beverly Gage, *The Day Wall*  
 16 *Street Exploded: A Story of American in Its First Age of Terror* (New York: Oxford  
 17 University Press, 2009); David Rapoport, *Waves of Global Terrorism: From 1879 to*  
 18 *the Present* (New York: Columbia University Press, 2022), 65-110. Consider also  
 19 the bombing of the office of the *Los Angeles Times* in 1910 by two union activists,  
 20 which killed 21 persons and injured 100 more, in Louis Adamic, *Dynamite: The*  
 21 *Story of Class Violence in America* (New York: Viking, 1931).

22 <sup>100</sup> For this and other murders of Osage people see David Grann, *Killers of*  
 23 *the Flower Moon: The Osage Murders and the Birth of the FBI* (New York,  
 24 Doubleday, 2017).

25 <sup>101</sup> Robert J. Spitzer, “Gun Accessories and the Second Amendment: Assault  
 26 Weapons, Magazines, and Silencers,” *Law and Contemporary Problems* 83 (2020):  
 27 238 (<https://scholarship.law.duke.edu/lcp/vol83/iss3/13>). In the same period,  
 28 five additional states restricted magazine capacity for fully automatic weapons, but  
 not semiautomatic weapons.

<sup>102</sup> The National Firearms Act of 1934, 48 Statute 1236  
 ([https://homicide.northwestern.edu/docs\\_fk/homicide/laws/national\\_firearms\\_act\\_of\\_1934.pdf](https://homicide.northwestern.edu/docs_fk/homicide/laws/national_firearms_act_of_1934.pdf)); and the National Firearms Act of 1938, 52 Statute 1250  
 ([https://homicide.northwestern.edu/docs\\_fk/homicide/laws/national\\_firearms\\_act\\_of\\_1938.pdf](https://homicide.northwestern.edu/docs_fk/homicide/laws/national_firearms_act_of_1938.pdf)).

1 building upon regulations that began in 1917 with the passage of the Federal  
2 Explosives Act, which restricted the distribution, storage, possession, and use of  
3 explosive materials during the time of war.<sup>103</sup>

4 47. Since 1970, public officials have continued to reserve the right to  
5 regulate the sale, ownership, and control of new technologies that can be used by  
6 individuals or small groups to commit mass murder. The Homeland Security Act  
7 of 2002 improved security at airports and in cockpits to ensure that airplanes could  
8 not be used by terrorists to commit mass murder. The Secure Handling of  
9 Ammonium Nitrate Act of 2007 restricted access to large quantities of fertilizer to  
10 prevent terrorist attacks like the one that killed 165 people in Oklahoma City in  
11 1995.<sup>104</sup> And in the wake of the massacre of 58 people and wounding of hundreds  
12 of others at a concert in Las Vegas in 2017, the Trump administration issued a  
13 regulation that banned the sale or possession of bump stocks. It gave owners 90  
14 days to destroy their bump stocks or turn them in to the Bureau of Alcohol,  
15 Tobacco, Firearms, and Explosives.<sup>105</sup>

16 48. In recent decades, criminal organizations, terrorists, and lone gunmen  
17 with an intent to commit mass murder have also discovered the effectiveness of  
18 rapid-fire semiautomatic weapons with large capacity magazines. These weapons,  
19 which were designed for offensive military applications rather than individual self-

20  
21 <sup>103</sup> The Organized Crime Control Act of 1970, 84 Statute 922; and the  
22 Federal Explosives Act of 1917, 40 Statute 385.

23 <sup>104</sup> Public Law 107-296, November 25, 2002, “To Establish the Department  
24 of Homeland Security” ([https://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)); and  
25 6 U.S. Code § 488a - Regulation of the sale and transfer of ammonium nitrate  
26 (<https://www.law.cornell.edu/uscode/text/6/chapter-1/subchapter-VIII/part-J>). The  
27 ammonium nitrate regulations were to be enforced no later than 90 days after  
28 December 26, 2007. Accessed August 31, 2022.

<sup>105</sup> *New York Times*, December 18, 2018  
(<https://www.nytimes.com/2018/12/18/us/politics/trump-bump-stocks-ban.html>),  
accessed October 4, 2022.

1 defense, emerged from technologies developed for military use during the Cold  
2 War. The signature military firearm of that era—the M-16 rifle with a 30-round  
3 magazine and a muzzle velocity of over 3,000 feet per second<sup>106</sup>—was capable of  
4 firing 750 to 900 rounds per minute when set on fully automatic. But the M-16 was  
5 used more often in combat—and more accurately, effectively, and sustainably as a  
6 weapon for inflicting mass casualties—when set on semiautomatic, which was  
7 standard military procedure. That is why the U.S. Army defines “rapid fire” as 45  
8 rounds per minute, not 750 to 900.<sup>107</sup> And that is why in 1998 the U.S. Marine  
9 Corps adopted the M-16A4, which replaced the “fully automatic” switch with a  
10 three-round burst—an alteration that slows the potential rate of fire, conserves  
11 ammunition, and improves accuracy.<sup>108</sup>

12 49. The muzzle velocity of semiautomatic handguns, like the Glock 17, is  
13 far lower than that of an M-16 or its civilian counterparts: around 1,350 feet per  
14 second. But technological advances have increased the speed at which  
15 semiautomatic handguns can be fired. An expert can fire an entire 30-round clip  
16 from a Glock 17 handgun in five seconds.<sup>109</sup> And they are affordable. A new  
17  
18  
19

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20 <sup>106</sup> Muzzle velocity is the speed at which a round exits the barrel of a firearm.

21 <sup>107</sup> Sections 8-17 through 8-22 (Rates of Fire), Sections 8-23 and 8-24  
22 (Follow Through), and Sections B-16 through B22 (Soft Tissue Penetration), in *TC*  
23 *3-22.9 Rifle and Carbine Manual*, Headquarters, Department of the Army (May  
24 2016). Available at the Army Publishing Directorate Site  
([https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/ARN19927\\_TC\\_3-22x9\\_C3\\_FINAL\\_WEB.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN19927_TC_3-22x9_C3_FINAL_WEB.pdf)), accessed October 4, 2022.

25 <sup>108</sup> See military-today.com (<http://www.military-today.com/firearms/m16.htm>), accessed October 4, 2022.

26 <sup>109</sup> See Jerry Miculek, “Dual Glock 17 Rapid Fire 60 Rounds in 5 Seconds!  
27 660 RPM.” YouTube (<https://www.youtube.com/watch?v=1H5KsnoUBzs>),  
28 accessed September 1, 2022.

1 semiautomatic handgun can be purchased for less than \$200 and equipped with a  
2 33-round magazine for less than \$15.<sup>110</sup>

3 50. It did not take criminals, terrorists, and lone gunmen long to adopt the  
4 rapid-fire semiautomatic handguns and rifles with large capacity magazines that  
5 poured onto the domestic market in the 1970s and 1980s. These firearms can inflict  
6 mass casualties in a matter of seconds and maintain parity with law enforcement in  
7 a standoff.

8 51. Manufacturers soon discovered ways to increase the rate of fire of  
9 these new semiautomatic weapons even further. Some innovations, such as bump  
10 stocks and modification kits, allowed owners to transform semiautomatic rifles into  
11 fully automatic rifles. And in response to the Trump administration's regulatory  
12 ban on the production and sale of bump stocks and modification kits, the firearms  
13 industry has developed "binary" triggers that fire when pulled *and when released*—  
14 a modification that doubles the rate at which semiautomatic weapons can be  
15 fired.<sup>111</sup>

16 <sup>110</sup> See guns.com for the price of semiautomatic handguns  
17 ([https://www.guns.com/firearms/handguns/semi-](https://www.guns.com/firearms/handguns/semi-auto?priceRange=Less%20than%20%24250)  
18 [auto?priceRange=Less%20than%20%24250](https://www.guns.com/firearms/handguns/semi-auto?priceRange=Less%20than%20%24250)) and bymymags.com for the price of  
19 large capacity magazines (<https://www.buymymags.com/>), accessed October 4,  
20 2022.

21 <sup>111</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, Office of  
22 Enforcement Programs and Services, Office of Field Operations, "Open Letter to  
23 All Federal Firearms Licensees," March 22, 2022  
24 ([https://www.atf.gov/firearms/docs/open-letter/all-ffls-mar-2022-open-letter-forced-](https://www.atf.gov/firearms/docs/open-letter/all-ffls-mar-2022-open-letter-forced-reset-triggers-frts/download)  
25 [reset-triggers-frts/download](https://www.atf.gov/firearms/docs/open-letter/all-ffls-mar-2022-open-letter-forced-reset-triggers-frts/download)), accessed October 4, 2022. The ATF has not banned  
26 the production, sale, or ownership of binary triggers, but the several states have  
27 done so, citing the threat they pose to the safety of the public and law enforcement.  
28 Those states include North Dakota, Hawaii, Connecticut, New Jersey, Maryland,  
Washington, California, D.C., Iowa, New York, Rhode Island, and Florida.  
(<https://lundestudio.com/are-binary-triggers-legal/>), accessed October 4, 2022. See  
also americanfirearms.org, "A Complete Guide to Binary Triggers,"  
(<https://www.americanfirearms.org/guide-to-binary-triggers/>), accessed October 4,  
2022.

52. Just as dangerous, however, were modifications that helped users fire more rapidly with semiautomatic firearms. The modifications included “fixes” as simple as stretching a rubber band from the trigger to the trigger guard of an AR-15—the civilian version of the M-16, which differs from the military model only in its lack of a switch for fully automatic. The band pushes the trigger forward more rapidly after each round and enables users to fire rapid semiautomatic bursts with help of the weapon’s natural recoil. The rubber band method works because manufacturers have increased the fire rate of semiautomatic weapons by decreasing the pressure it takes to pull the trigger.<sup>112</sup>

53. The threat to public safety and law enforcement posed by semiautomatic rifles—with or without dangerous modifications—is a modern phenomenon that has a direct correlation with mass murder and mass shootings. The danger these firearms pose is intrinsically different from past weaponry. In the same way that the Colt cap-and-ball revolvers and breech-loaded firearms resulted in increased deaths by firearms, the development of semiautomatic rifles and handguns dramatically increased the number killed or wounded in mass shootings from 1966 to the present (see Figure 1, below).

Figure 1

	Mass shootings with non-semiautomatic/non-automatic firearm	Mass shootings with semiautomatic handgun	Mass shootings with semiautomatic rifle	Mass shootings with automatic firearms
Average Killed	5.4	6.5	9.2	8.1
Average Wounded	3.9	5.8	11.0	8.1

<sup>112</sup> See “Rapid Manual Trigger Manipulation (Rubber Band Assisted),” YouTube ([https://www.youtube.com/watch?v=PVfwFP\\_RwTQ](https://www.youtube.com/watch?v=PVfwFP_RwTQ)), accessed October 4, 2022.



Average Victims	9.3	12.3	20.2	16.2
Number of Mass Shootings	52	82	40	8

Note that mass shootings with semiautomatic rifles have been as deadly as mass shootings with fully automatic weapons.<sup>113</sup>

54. And the threat posed by semiautomatic rifles is amplified when they are used in conjunction with extended magazines (more than 10 rounds) (see figure 2, below).

Figure 2

	No extended magazine	Extended magazine
Mass shootings	10.3	26.4

<sup>113</sup> The data are from the Violence Project (<https://www.theviolenceproject.org/mass-shooter-database/>), accessed October 4, 2022. The Violence Project, which has compiled data on mass shootings from 1966 through 2021, defines a mass shooting as “a multiple homicide incident in which four or more victims are murdered with firearms—not including the offender(s)—within one event, and at least some of the murders occurred in a public location or locations in close geographical proximity (e.g., a workplace, school, restaurant, or other public settings), and the murders are not attributable to any other underlying criminal activity or commonplace circumstance (armed robbery, criminal competition, insurance fraud, argument, or romantic triangle).” The Violence Project database provides information on the weapons used in the shootings. It notes, for instance, that two shooters who possessed semiautomatic rifles at the times of their crimes did not use them, and that 8 shooters had illegal, fully automatic weapons. Those automatic weapons included 2 Uzi submachine guns, 3 machine pistols, 1 M-16, and 2 AK-47 rifles converted to automatic. I have not participated in Violence Project or in the collection of their data. In Figure 1, however, I have added the data from the six mass shootings that occurred from January through August, 2022, that fit the Violence Project’s definition of a mass shooting. Three were committed with semiautomatic rifles and three with semiautomatic handguns. The table does not include the Las Vegas shooting of 2017 (58 killed, 887 wounded).



with semiautomatic handgun		
Mass shootings with semiautomatic rifle	13.0	37.1

55. Without extended magazines, semiautomatic rifles cause an average of 40 percent more deaths and injuries in mass shootings than regular firearms, and semiautomatic handguns 11 percent more than regular firearms. But with extended magazines, semiautomatic rifles cause an average of 299 percent more deaths and injuries than regular firearms, and semiautomatic handguns 184 percent more than regular firearms. In combination, semiautomatic firearms and extended magazines are extraordinarily lethal.<sup>114</sup>

56. For these reasons, local governments have enacted bans on the sale of semiautomatic rifles with features that enhance their military utility, as the federal government did from 1994 to 2004. And local governments have banned the sale of large capacity magazines, because they allow mass murderers to prolong their attacks before citizens or law enforcement can intervene—usually when the shooter is reloading. For example, the shooter who wounded U.S. House Representative Gabby Giffords in Tucson, Arizona, in 2011 was able to fire 31 rounds with a Glock 19 semiautomatic handgun in a matter of seconds before bystanders could disarm him as he changed magazines. Every one of those rounds hit an individual, killing six and injuring twelve.<sup>115</sup>

## V. CONCLUSION

57. From the Founding Generation to the present, the people of the United States and their elected representatives have recognized that there are instances in

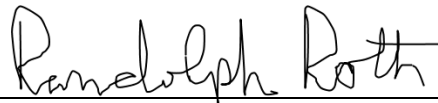
<sup>114</sup> The data are from the Violence Project.

<sup>115</sup> “2011 Tucson Shooting,” Wikipedia ([https://en.wikipedia.org/wiki/2011\\_Tucson\\_shooting](https://en.wikipedia.org/wiki/2011_Tucson_shooting)), accessed September 2, 2022.

1 which the security of the republic and the safety of its citizens require government-  
2 imposed restrictions. That is why the majority of states passed and enforced laws  
3 against the carrying of concealable weapons, why the federal government passed  
4 the Ku Klux Klan Acts during Reconstruction, and why states, municipalities, and  
5 the federal government have passed and enforced laws since World War I to restrict  
6 ownership or control of modern technologies that enable criminals, terrorists, and  
7 malicious or delusional individuals to commit mass murder. Public officials are not  
8 required to pass such laws, of course, but historically, they have always retained the  
9 ability to do so. There is no evidence in the historical record to suggest that they  
10 took their decisions lightly when they imposed these restrictions on weapons and  
11 armed voluntary organizations. And mass murders by individuals, including mass  
12 shootings, are a recent phenomenon, caused by changes in technology that emerged  
13 in the late nineteenth through the late twentieth century. Public officials today are  
14 confronting a criminological problem that did not exist in the Founding Era, nor  
15 during the first century of the nation's existence.

16  
17 I declare under penalty of perjury under the laws of the United States of  
18 America that the foregoing is true and correct.

19 Executed on November 9, 2022, at Dublin, Ohio.

20  
21   
22 \_\_\_\_\_  
23 Randolph Roth  
24  
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26  
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## **EXHIBIT A**

Randolph Roth

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Curriculum Vitae

RANDOLPH ROTH

Department of History  
The Ohio State University  
Columbus, OH 43210-1367  
(614) 292-6843  
FAX: 614-292-2822  
E-mail: roth.5@osu.edu

6987 Grandee Cliffs Drive  
Dublin, OH 43016

(614) 889-5043

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Randolph Roth

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### **Personal**

Marital Status:	Married	Allison Sweeney
Children:	Alexander	

### **Education**

1981, Ph.D. in History, Yale University (thesis, "Whence This Strange Fire? Religious and Reform Movements in Vermont, 1791-1843," David Brion Davis and Howard R. Lamar, advisors)

1973, B.A., with honors and distinction, in History, Stanford University (thesis, "Progressive Reform and Socialism in Berkeley, California, 1877-1924," Carl Degler and Barton Bernstein, advisors)

### **Academic Positions**

1985-present, The Ohio State University: College of Arts and Sciences  
Distinguished Professor of History and Sociology  
1978-1985, Grinnell College: Assistant Professor of History  
1978, University of Vermont: Instructor in History  
1974-1977, Graduate Teaching Assistant, Yale University

### **Honorary Positions**

2012, Wayne N. Aspinall Visiting Chair Professor, University of Colorado Mesa

### **Professional Honors and Awards for Scholarship**

2013-2016, Member, Roundtable on Crime Trends in America, National Research Council, National Academy of Sciences

2012, Fellow, American Association for the Advancement of Science

2011, Michael J. Hindelang Award, American Society of Criminology, for the outstanding contribution to criminology over the previous three years

2010, Allan Sharlin Memorial Award, Social Science History Association, for an outstanding book in social science history

2010, Outstanding Academic Books, *Choice*

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1988, E. Harold Hugo Memorial Book Prize, Old Sturbridge Village Research Society, for distinguished work in the history of rural society

1982, Thorton Rockwell Field Prize, Yale University, for the outstanding dissertation in the Humanities

1982, George Washington Eggleston Prize, Yale University, for the outstanding dissertation in American history

1973, James Birdsall Weter Prize, Stanford University, for the outstanding senior thesis in history

#### **Professional Honors and Awards for Teaching**

2017, Rodica C. Botoman Award for Distinguished Undergraduate Teaching and Mentoring, College of Arts and Humanities

2013, Outstanding Teaching Award, College of Arts and Sciences Student Council

2009, Ohio State University Alumni Award for Distinguished Teaching

2007, Distinguished Teaching Award, Ohio Academy of History

1995, Clio Award, Phi Alpha Theta Honor Society, for Distinguished Teaching in History at Ohio State University

#### **Grants**

2013-2014, Research Grant, Harry Frank Guggenheim Foundation

2012-2015, Research Grant, National Science Foundation (SES-1228406)

2000, Fellowship for University Teachers, National Endowment for the Humanities

1998-2000, Research Grant and Supplemental Research Grant, National Science Foundation (SBR-9808050)

1992, Fellow, Workshop on the Rhetoric of Social History, University of Iowa



Randolph Roth

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1989-1990, Research Fellowship, Harry Frank Guggenheim Foundation

1987, National Endowment for the Humanities, Summer Stipend

1983, Research Fellowship for Recent Recipients of the Ph.D., American Council of Learned Societies

1981, Fred Harris Daniels Fellowship, American Antiquarian Society

### **Bibliography and Research**

#### **Books**

*American Homicide* (an interregional study of violent crime and violent death in America from colonial times to the present). The Belknap Press of Harvard University Press (2009), 655 pp.

*The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley of Vermont, 1791-1850*. Cambridge University Press (1987), 399 pp.

#### **Edited Volumes**

Co-founder and co-director, Historical Violence Database (on-line database on violent crime, violent death, and collective violence). Web address:  
[www.sociology.ohio-state.edu/cjrc/hvd](http://www.sociology.ohio-state.edu/cjrc/hvd)

American Homicide Supplementary Volume (on-line supplement to *American Homicide*, including detailed appendices on methods, supplemental tables, graphs, and statistical analyses), approx. 750 pp. Web address:  
<http://cjrc.osu.edu/researchprojects/hvd/AHsup.html>

#### **Essays on Historical Subjects**

“Homicide and the Opioid Epidemic: A Longitudinal Analysis,” co-authored with Richard Rosenfeld and Joel Wallman. *Homicide Studies* (forthcoming).

“The Opioid Epidemic and Homicide in the United States,” co-authored with Richard Rosenfeld and Joel Wallman. *Journal of Research in Crime and Delinquency* 58: 1 (2021): 1-46.

Randolph Roth

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“Homicide-Suicide by Women against Intimate Partners,” co-authored with Wendy C. Regoeczi, in Todd Shackelford, ed., *Sage Handbook of Domestic Violence* (Newbury Park: Sage Publications, 2020), v 1, 318-329.

“Why Guns Are and Aren’t the Problem: The Relationship between Guns and Homicide in American History,” in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019), 113-133.

“Does Better Angels of Our Nature Hold Up as History?” *Historical Reflections* 44: 1 (2018): 91-103.

“Criminologists and Historians of Crime: A Partnership Well Worth Pursuing.” *Crime, History, and Societies* 21: 2 (2017): 387-400.

“How Exceptional Is the History of Violence and Criminal Justice in the United States? Variation across Time and Space as the Keys to Understanding Homicide and Punitiveness,” in Kevin Reitz, ed. *American Exceptionalism in Crime and Punishment* (Oxford University Press, 2017).

"Getting Things Wrong Really Does Help, as Long as You Keep Trying to Get Things Right: Developing Theories About Why Homicide Rates Rise and Fall" in Michael D. Maltz and Stephen Rice, eds., *Envisioning Criminology: Researchers on Research as a Process of Discovery* (Springer Verlag, 2015), 143-150.

“Roundtable on History Meets Biology: Introduction,” *American Historical Review* (2014) 119: 1492-1499. Principal author and organizer of the Roundtable.

“Emotions, Facultative Adaptation, and the History of Homicide,” *American Historical Review* (2014) 119: 1529-1546.

“Gender, Sex, and Intimate-Partner Violence in Historical Perspective,” in Rosemary Gartner and William McCarthy, eds., *Oxford Handbook on Gender, Sex, and Crime* (Oxford University Press, 2014), 175-190.

“The Importance of Testing Criminological Theories in Historical Context: The Civilization Thesis versus the Nation-Building Hypothesis,” *Criminology* online: Presidential Session Papers from the American Society of Criminology (2014)

“Making Sense of Violence? Reflections on the History of Interpersonal Violence in Europe,” *Crime, History, and Societies* (2013) 17: 5-26. Richard McMahon, Joachim Eibach, and Randolph Roth. Introduction to a special issue solicited by the Board of Editors of *Crime, History, and Societies*, co-edited with Joachim

Randolph Roth

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Eibach, University of Berne, and Richard McMahon, University of Liverpool.

“Scientific History and Experimental History,” *Journal of Interdisciplinary History* (2013) 43: 443-458.

“Measuring Feelings and Beliefs that May Facilitate (or Deter) Homicide,” *Homicide Studies* (2012) 16: 196-217.

“Yes We Can: Working Together toward a History of Homicide That Is Empirically, Mathematically, and Theoretically Sound,” *Crime, History, and Societies* (2011) 15: 131-145.

“Biology and the Deep History of Homicide,” *British Journal of Criminology* (2011) 51: 535-555.

“Homicide Rates in the Old West.” *Western Historical Quarterly*. Randolph Roth, Michael D. Maltz, and Douglas L. Eckberg (2011) 42: 173-195.

“American Homicide: Theory, Methods, Body Counts.” *Historical Methods* (2010) 43: 185-192.

“The Historical Violence Database: A Collaborative Research Project on the History of Violent Crime and Violent Death.” *Historical Methods*. Randolph Roth, Cornelia Hughes Dayton, Kenneth Wheeler, James Watkinson, Robb Haberman, James M. Denham, and Douglas L. Eckberg (2008) 41: 81-98.

“Homicide in Florida, 1821-1861: A Quantitative Analysis.” *Florida Historical Quarterly*. Randolph Roth and James M. Denham (2007) 86: 216-239.

“Guns, Murder, and Probability: How Can We Decide Which Figures to Trust?” *Reviews in American History* (2007) 35: 165-75.

“Twin Evils? Slavery and Homicide in Early America,” in Steven Mintz and John Stauffer, eds., *The Problem of Evil: Slavery, Freedom, and the Ambiguities of American Reform*. Amherst: University of Massachusetts Press (2007), 74-88.

“Rural Communities,” in Feintuch, Burt and David H. Watters, eds., *Encyclopedia of New England*. Yale University Press (2005), 53-55.

“Counting Guns: What Social Science Historians Know and Could Learn about Gun Ownership, Gun Culture, and Gun Violence in the United States,” *Social Science History* (2002) 26: 699-708.

“Guns, Gun Culture, and Homicide: The Relationship between Firearms, the Uses of Firearms, and Interpersonal Violence in Early America,” *William and Mary*

Randolph Roth

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*Quarterly* (2002) 59: 223-240.

"Homicide in Early Modern England, 1549-1800: The Need for a Quantitative Synthesis." *Crime, History, and Societies* (2001) 5: 33-67.

"Child Murder in New England," *Social Science History* (2001) 25: 101-147.

"Spousal Murder in Northern New England, 1791-1865," in Christine Daniels, ed., *Over the Threshold: Intimate Violence in Early America, 1640-1865*. Routledge Press (1999), 65-93.

"'Blood Calls for Vengeance!': The History of Capital Punishment in Vermont," in Michael Sherman, ed., *Vermont State Government*. Vermont Secretary of State and Vermont Historical Society (1997), 10-25.

"The Generation Conflict Reconsidered," in *American Vistas*, ed. Leonard Dinnerstein & Kenneth T. Jackson. Oxford University Press (7th ed. 1995), 116-127.

"The Other Masonic Outrage: The Death and Transfiguration of Joseph Burnham," *Journal of the Early Republic* (1994) 14: 35-69.

"The First Radical Abolitionists: The Reverend James Milligan and the Reformed Presbyterians of Vermont," *New England Quarterly* (1982) 55: 540-563.

### **Essays on Methods and Theory**

"'To Err Is Human': Uniformly Reporting Medical Errors and Near Misses, a Naïve, Costly, and Misdirected Goal." *Journal of the American College of Surgeons*. Charles H. Andrus, Eduardo G. Villaseñor, John B. Kettelle, Randolph Roth, Allison M. Sweeney, and Nathaniel M. Matolo (2003) 196: 911-918.

"Is There a Democratic Alternative to Republicanism? The Rhetoric and Politics of Synthesis in American History," in Jeffrey Cox and Sheldon Stromquist, eds., *Contesting the Master Narrative: Essays in Social History*. University of Iowa Press (1998), 210-256.

"Did Class Matter in American Politics? The Importance of Exploratory Data Analysis," *Historical Methods* (1998) 31: 5-25.

"Is History a Process? Revitalization Theory, Nonlinearity, and the Central Metaphor of Social Science History," *Social Science History* (1992) 16: 197-243.

"Ecological Regression and the Analysis of Voter Behavior," *Historical Methods*

Randolph Roth

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(1986) 19: 103-117.

### **Public History Essays**

"Can Faith Change the World? Religion and Society in Vermont's Age of Reform," *Vermont History* (2001) 69: 7-18.

"Wayward Youths: Raising Adolescents in Vermont, 1777-1815," *Vermont History* (1991) 59: 85-96.

"Why Are We Still Vermonters? Vermont's Identity Crisis and the Founding of the Vermont Historical Society," *Vermont History* (1991) 59: 197-211.

### **Works in Progress**

*Child Murder in America*. An interregional study of murders of and by children from colonial times to the present (in manuscript through early 20<sup>th</sup> century)

"How Scientific Is Environmentalist History? The Rhetoric and Politics of Speaking for Nature" (essay in manuscript)

### **Editorial Boards**

2014-2017, *American Historical Review*  
2012-2016, 1995-2005, *Historical Methods*  
2011- , *Homicide Studies*  
2004- , *Crime, History, and Societies*

### **Invited Lectures**

"The History of Police Involved Homicides in the United States," Mary Immaculate College & the University of Limerick, Ireland, October 26, 2021.

"Firearms and Homicide in the United States: A History," British Crime Historians Symposium, Leeds University, Great Britain, Scheduled for September 2-3, 2021.

"The History of Cross-National Homicide Rates: What We Can Learn from the Available Historical Data, and Why We Have to Worry about Learning the Wrong Lessons," Bielefeld University, Germany, scheduled for April 29, 2020. Postponed.

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“Inequality,” Ashland University, October 16, 2019.

“The History of Gun Violence in America,” Shasta Seminar, Wesleyan University, October 28, 2017.

“Why Guns Are and Aren’t the Problem,” Ashland University Center for the Study of Nonviolence, Ashland University, April 1, 2017.

“Firearms and Violence in American History,” Aspen Institute, September 15, 2016, Washington, D.C.

“Homicide in the United States: The Long History and Recent Trends,” The Donald and Margaret Sherman Violence Prevention Lecture, Jerry Lee Center of Criminology, University of Pennsylvania, April 10, 2015.

“The History of Child Murder,” Andrew Young School of Public Policy, Georgia State University, January 28, 2014.

“The Causes of Homicide,” National Institute of Justice, December 2, 2013.

“Biology, History, and the Causes of Homicide,” School of Law, University of Buffalo, October 10, 2013.

“Bio-Historical Co-Evolution and the Biology of Social Behavior: The Prospects for a New Institute on History and the Sciences,” Max Planck Institutes, Berlin, Germany, June 27, 2013.

“Deterrence, Judicial Tolerance, and the Homicide Problem in America,” Robina Institute of Criminal Law and Justice, University of Minnesota, April 26, 2013

“Child Murder in America: A History,” Population Studies Center and Department of History, University of Michigan, April 8, 2013

“America’s Homicide Problem,” Northwestern University School of Law, November 16, 2012

“American Homicide,” Aspinall Lecture, Colorado Mesa University, April 5, 2012

“Quantitative Analysis of the History of Crime and Violence: Achievements and Prospects,” Keynote Address, Conference on “Making Sense of Violence,” University of Bern, September 8, 2011

“Can We Learn to Play Well with Others? Enlisting the Humanities, the Sciences,

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and the Social Sciences in the Study of Violence.” Conference on Emerging Disciplines, Humanities Research Center, Rice University, February 25, 2011

“American Homicide,” Washington Forum, Ohio University, Athens, Ohio, May 25, 2010

“Can We Learn to Play Well with Others? Enlisting the Humanities, the Sciences, and the Social Sciences in the Study of Violence.” Presidential Plenary Address, Southwestern Social Science Association, Houston, Texas, April 1, 2010

“Homicide on Florida’s Antebellum Frontier,” Robert and Rose Stahl Criminal Justice Lecture, Lawton M. Chiles Center for Florida History, Florida Southern College, Lakeland, Florida, March 25, 2010

“Homicide in the American Backcountry, 1717-1850,” Keynote Address at the “From Borderland to Backcountry Conference: Frontier Communities in Comparative Perspective” at the University of Dundee, Scotland, July 7, 2009

“Research Strategies for Studying the History of Crime and Violence,” Seminar on Crime and Criminal Justice, Northwestern University School of Law, Nov. 15, 2007

“American Homicide: Its History,” Ohio State University at Newark, Nov. 6, 2007

“American Homicide: A Political Hypothesis” and “The Case for Social Science History,” Northern Illinois University, April 4-5, 2007

“What Historians Can and Might Learn from Legal Sources.” Seminar in Early American History, Northwestern University, Jan. 31, 2007

“Why Is America a Homicidal Nation? A Political Hypothesis,” lecture in the Historical Approaches in the Social Sciences series, State University of New York at Binghamton, Oct. 12, 2006

“The History of American Homicide,” Winter College, Ohio State University, Sarasota, Florida, February 24, 2006

“The Role of Small Arms in American History,” Small Arms Working Group, Harry Frank Guggenheim Foundation, Columbia University, June 2005

“Why is the United States So Homicidal Compared to Other Western Democracies? A Political and Psychological Hypothesis,” Center for Historical Research and Documentation on War and Contemporary Societies, Belgian Ministry of Scientific Research, Brussels, Belgium, December 2004



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"The History of American Homicide," Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University, November 2004

"Peaceable Kingdoms? Harmony and Hostility in the Early American Family," Plenary Session, Society of Historians of the Early American Republic, July 22, 2004

"American Homicide," Department of History, Miami University, March, 2004

"Slavery, Freedom, and the History of African-American Homicide." School of Law and Department of History, University of Chicago, January, 2003

"American Homicide," School of Law, Stanford University, February, 2003

Workshop of the Study of the History of Homicide, Department of History, Stanford University, February, 2003

"American Homicide," Social Science Faculty Seminar, Stanford University, February, 2003

"American Homicide," School of Law, Northwestern University, September, 2003

"American Homicide," School of Law, University of Chicago, November, 2002

"Twin Evils?: The Relationship between Slavery and Homicide," Department of History, Yale University, May, 2002

"The Puzzle of American Homicide," School of Law, Northwestern University, November, 2001

"Why Northern New Englanders Seldom Commit Murder: An Interregional History of Homicide in America," and "The Historical Database Project on Crime and Violence in America," two lectures presented at the Charles Warren Center, Harvard University. May, 2000

"Understanding Homicide in America: An Interregional Approach," presentation to the Early American History Seminar, University of Pennsylvania, October, 1999

"Can Faith Change the World?" Keynote address, Conference on Reform in Antebellum Vermont, Vermont Historical Society, September, 1999

"Why Northern New Englanders Seldom Commit Murder," presentation to the

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Center for Research on Vermont, the University of Vermont, and the Vermont Council on the Humanities. The presentation was televised in Vermont. It also made the evening news in Burlington and an AP wire story on my presentation was printed widely in newspapers in New Hampshire and Vermont, April, 1999

**Papers Delivered at Professional Meetings (recent)**

“The Difficulty of Counting the Number of Children Killed in Homicides in the United States, 1959-Present.” Social Science History Association, November 23, 2019, Chicago.

“Police Involved Homicides in Ohio, 1959-1988,” American Society of Criminology, November 13, 2019, San Francisco, with Wendy Regoczi and Rania Issa.

“Can Criminologists and Historians of Crime Work Together More Fruitfully in the Future?” Social Science History Association, November 3, 2017, Montreal.

“Comparing Data Sources on the Police Use of Lethal Force,” American Society of Criminology, November 15, 2017, Philadelphia, with Wendy Regoczi and Rania Issa.

“The History of Mass Murder,” American Historical Association, January 6, 2017, Denver.

“The Historians’ Role in Criminal Justice Research,” American Society of Criminology, November 16, 2016, New Orleans

“Police and Security Guard Involved Homicides in Ohio, 1959-1988,” American Society of Criminology, November 18, 2016, New Orleans

“Why History and Biology Matter to One Another: The Epigenetics of Social Behavior,” American Historical Association, New York City, January 4, 2015

“The National Homicide Data Improvement Project, 1959-Present: Why Research in Multiple Sources Changes Dramatically Our Understanding of the Incidence and Character of Homicides in the United States,” American Society of Criminology, San Francisco, November 19, 2014

"The Relationship between Guns, Homicides, and Suicide in American History," Organization of American Historians, Atlanta, April 4, 2014

“Situating Crime in Macro-Social and Historical Context,” Presidential Panel, American Society of Criminology, Atlanta, November 22, 2013

Randolph Roth

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“Has Violence Declined since the Middle Ages?” Presidential Panel, American Society of Criminology, Chicago, November 15, 2012

“The Sudden Appearance of Sexual Serial Killers in Late-Nineteenth Century America,” Organization of American Historians, Houston, March 20, 2011

“The Biology of Social Behavior” at the annual conference of the Society of Historians of the Early American Republic, Philadelphia, July 15, 2011

“Measuring Feelings and Beliefs that May Facilitate (or Deter) Homicide,” at the American Society of Criminology meeting in Washington, D.C., November 16, 2011

“Measuring Feelings and Beliefs that May Facilitate (or Deter) Homicide,” at the Social Science History Association meeting in Boston, November 20, 2011

“Author Meets Critics” session on *American Homicide* at the European Social Science History conference in Ghent, Belgium, April 13, 2010. Discussants: Manuel Eisner, Peter King, and Pieter Spierenburg

“The Relationship between Guns and Homicide in American History,” American Society of Criminology conference in San Francisco, November 18, 2010

“Author Meets Critics” session on American Homicide at the Social Science History Association conference in Chicago, November 20, 2010. Discussants: Richard McMahon, Douglas Eckberg, Donald Fyson, and John Carter Wood

“Does Honor Hold the Key to Understanding Violence in the Early Republic,” Society for Historians of the Early American Republic, Springfield, Illinois, July 2009.

“The Difficulty of Reconciling the Homicide Counts in the National Center for Health Statistics Mortality Data and the FBI Supplementary Homicide Reports,” Social Science History Association, Long Beach, California, November, 2009

“Homicide in American History,” Ohio Academy of History, Dayton, Ohio, April 12, 2008

“Quantification and Social Theory in the Study of Crime and Violence,” in the Presidential Panel on “History in the Social Science History of Association: Disciplinary Developments,” Social Science History Association, Chicago, Nov. 15-18, 2007

“Are Modern and Early Modern Homicide Rates Comparable? The Impact of

Randolph Roth

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Non-Emergency Medicine,” Social Science History Association, Chicago, Nov. 15-18, 2007

“How Homicidal Was Antebellum Florida?” Gulf South History and Humanities Conference, Pensacola, Florida, Oct. 6, 2006

"Probability and Homicide Rates: Why We Can Be Certain the Nineteenth-Century West Was Violent." Social Science History Association convention in Minneapolis, Nov. 2-5, 2006

“The Historical Violence Database: A Collaborative Research Project on the History of Violent Crime and Violent Death.” Social Science History Association convention in Minneapolis, Nov. 2-5, 2006

“Big Social Science: What Could We Learn about Violent Crime If We Had Enough Money to Study It Properly? Possibilities for Collaborative Research Projects,” Social Science History Association, Portland, Oregon, November 3-6, 2005

## Reviews

T. Cole Jones, *Captives of Liberty: Prisoners of War and the Politics of Vengeance in the American Revolution* (American Historical Review, 2021).

Chris Murphy, *The Violence Inside Us: A Brief History of an Ongoing American Tragedy* (Criminal Law and Criminal Justice Books, 2020).

Jeffrey S. Adler, *Murder in New Orleans: The Creation of Jim Crow Policing*. (Punishment and Society, 2020).

Heidi J. Osselaer, *Arizona's Deadliest Gunfight: Draft Resistance and Tragedy at the Power Cabin, 1918*. (Western Historical Quarterly, 2020).

Iain McGilchrist, *The Master and His Emissary: The Divided Brain and the Making of the Western World*. (Journal of Interdisciplinary History, 2011).

Heather Cox Richardson, *Wounded Knee: Party Politics and the Road to an American Massacre*. (Journal of the Civil War Era, 2011).

Bill Neal, *Sex, Murder, and the Unwritten Law: Gender and Judicial Mayhem, Texas Style*. (New Mexico Historical Quarterly, 2010).

Gordon Morris Bakken and Brenda Farrington, *Women Who Kill Men: California Courts, Gender, and the Press*. (Pacific Northwest Quarterly, 2010).

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Jack D. Marietta and Gail S. Rowe, *Troubled Experiment: Crime, Justice, and Society in Pennsylvania, 1682-1800*. (William and Mary Quarterly, 2010).

Mark R. Pogrebin, Paul B. Stretesky, and N. Prabha Unnithan, *Guns, Violence, and Criminal Behavior: The Offender's Perspective*. (Criminal Justice Review, 2010)

Nicole Rafter, *The Criminal Brain: Understanding Biological Theories of Crime*. (Journal of Interdisciplinary History, 2009.)

Laura Browder, *Her Best Shot: Women and Guns in America* (Winterthur Portfolio 2007).

Paul M. Searls, *Two Vermonts: Geography and Identity, 1865-1910* (Vermont History, 2006).

Anu Koskivirta, *The Enemy Within: Homicide and Control in Eastern Finland in the Final Years of Swedish Rule, 1748-1808* (English Historical Review 2005).

Irene Quenzler Brown and Richard D. Brown, *The Hanging of Ephraim Wheeler: A Story of Rape, Incest, and Justice in Early American* (H-SHEAR, 2003).

T. D. S. Bassett, *The Gods of the Hills* (New England Quarterly, 2001).

Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (H-SHEAR, 1999).

Charles E. Clark, *The Meetinghouse Disaster* (Journal of American History, 1999).

Nicholas N. Kittrie and Eldon D. Wedlock, Jr., *The Tree of Liberty: A Documentary History of Rebellion and Political Crime in America* (Journal of the Early Republic, 1998).

Robert E. Shalhope, *Bennington and the Green Mountain Boys: The Emergence of Liberal Democracy in Vermont, 1790-1850* (Reviews in American History, 1997).

Daniel Doan, *Indian Stream Republic: Settling a New England Frontier* (Journal of the Early Republic, 1997).

Thomas H. Jeavons, *When the Bottom Line is Faithfulness: Management of Christian Service Organizations* (American Historical Review, 1996).

Randolph Roth

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N. Prabha Unnithan, *The Currents of Lethal Violence: an Integrated Model of Suicide & Homicide* (Justice Quarterly, 1995).

Edward Jarvis, *Traditions and Reminiscences of Concord, Massachusetts, 1779-1878* (Journal of the Early Republic, 1995).

Charles Hoffman and Tess Hoffman, *Brotherly Love: Murder and the Politics of Prejudice in Nineteenth-Century Rhode Island* (American Historical Review, 1994).

Richard Bushman, *The Refinement of America: Persons, Houses, Cities* (Pennsylvania History, 1994).

Michael Bellisiles, *Revolutionary Outlaws: Ethan Allen and Vermont's Struggle for Independence* (William and Mary Quarterly, 1994).

David G. Hackett, *The Rude Hand of Innovation: Religion and Social Order in Albany, New York, 1652-1836* (American Historical Review, 1992).

Nat Brandt, *The Congressman Who Got Away With Murder* (New York History, 1992).

Tamara Plakins Thornton, *Cultivating Gentlemen: The Meaning of Country Life Among the Boston Elite, 1785-1860* (American Historical Review, 1991).

George M. Thomas, *Revivalism and Cultural Change: Christianity, Nation Building, and the Market in the Nineteenth-Century United States* (Pennsylvania History, 1991).

Richard D. Brown, *Knowledge is Power: The Diffusion of Information in Early America, 1700-1865* (The History of Education Quarterly, 1990).

William J. Gilmore, *Reading Becomes a Necessity of Life: Material and Cultural Life in Rural New England, 1780-1865* (Vermont History, 1990).

Ruth Alden Doan, *The Miller Heresy, Millennialism, and American Culture* (Journal of the Early Republic, 1988).

William Lynwood Montell, *Killings: Folk Justice in the Upper South* (International Journal of Oral History, 1987).

David R. Kasserman, *Fall River Outrage: Life, Murder, and Justice in Early Industrial New England* (Journal of American History, 1987).

Robert J. Wilson III, *The Benevolent Diety: Ebenezer Gay and the Rise of*

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*Rational Religion in New England* (New England Quarterly, 1985).

**Languages**

German

Spanish

French (reading)

**Quantitative Skills**

Probability and Statistics (including econometric techniques of political analysis, exploratory data analysis, and log-linear and logit analysis)

Calculus and Analytical Geometry

Linear Algebra and Nonlinear Dynamics

Differential and Series Equations

Abstract Algebra



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**Teaching****Graduate**

History 7000	Topics in American History to 1877
History 7003	Readings in the Early Republic and Antebellum America
History 7650	Studies in World History
History 7900	Colloquium in the Philosophy of History, Historiography, and the Historian's Skills
History 8000	Seminar in Early American History

**Undergraduate**

History 2001	American Civilization, 1607-1877 (and Honors)
History 2015	History of American Criminal Justice
History 2650	World History since 1914
History 2800	Introduction to Historical
History 3164	World History since 1914: Readings
History 3193	Individual Studies / Research Internships in History
History 3700	American Environmental History
History 4650	History of Violence: Readings in World / Global / Transnational History
History 4675	Global History of Violence: Research Seminar
History 5900	Introduction to Quantitative Methods in History
History 598	Religious and Reform Movements (Senior Colloquium)
History 598	Research Seminar on Violent Crime and Death in the U.S.
History 557.02	Jeffersonian and Jacksonian Democracy, 1800-1840 Thought
History 282	American Religious History

**Publications on Teaching**

Founder and contributor to *Retrieving the American Past*, Department of History and Pearson Publishing, a flexible, problem-oriented publication for teaching classes in American History. Author of modules on "Violent Crime in Early America," "Marriage in Colonial America," and "Growing Up in Nineteenth-Century America."

**Ph.D Students Supervised**

Daniel Vandersommers, "Laboratories, Lyceums, and Lords: Zoos, Zoology, and the Transformation of Humanism in Nineteenth-Century America," August 2014. Recipient of a Presidential Fellowship, 2013-2014, the most prestigious

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University fellowship for senior graduate students. Assistant Professor of History, University of Dayton.

Michael Alarid, ““Caudillo Justice: Intercultural Conflict and Social Change in Santa Fe, New Mexico, 1837-1853,” June 2012. Assistant Professor of History, University of Nevada at Las Vegas.

Matthew Foulds, “Enemies of the State: Methodists, Secession and Civil War in Western Virginia, 1844-1865,” December 2011. Former Assistant Professor of History, Shepherd University

Jeanette Davis Mantilla, “Hush, Hush Miss Charlotte: Twenty-Five Years of Civil Rights Struggles in San Francisco, 1850-1875,” April 2000. Administrator in Charter School Division of the Department of Education, State of Ohio

Ken Wheeler, “The Antebellum College in the Old Northwest: Higher Education and the Defining of the Midwest,” January 1999. Professor of History, Reinhardt College. Author of *Cultivating Regionalism: Higher Education and the Making of the American Midwest* (Northern Illinois University Press, 2011)

Ross Bagby, “The Randolph Slave Saga.” July 1998. Librarian and independent scholar

Marianne Holdzkom, “Parody and Pastiche Images of the American Revolution in Popular Culture, 1765-1820,” May 1995. Professor of Social and International Studies, Southern Polytechnic State University

David Thomas, “Religion in the Far West: Oregon’s Willamette Valley, 1830-1850,” November 1993. Professor of History, Union College

#### **Recent Senior Honors Thesis Students Supervised (recently)**

Maggie Seikel, “The Great Depression in More Ways than One: Why Do Americans Commit Suicide More Often during Economic Crises?” (Anticipated 2021).

Margo Hertzner, “Police Involved Homicides in Ohio, 1959-1988.” (Anticipated 2021).

Laura Janosik, “Homicides Involving Women in Ohio, 1959-1988.” (2020). Prospective applicant to graduate school in history.

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Ben St. Angelo, “How Labor Disputes Led to Violence: Personalities, Paternalism, and Power at Republic Steel in Youngstown, Ohio: 1937.” (2017). Ph.D. student in History at Ohio State University.

Sarah Paxton, “The Bloody Ould Sixth Ward: Crime and Society in Five Points, New York” (2012). Ph.D. candidate in criminal justice history J.D. candidate at the Moritz School of Law at Ohio State University (twin degree program).

Kristen Gaston, “Restoration of the Cuyahoga River” (2012). Ph.D. candidate in Environmental History at the University of Cincinnati.

Alexandra Finley, “Founding Chestnut Ridge: The Origins of Central West Virginia’s Multiracial Community” (2010). Ph.D. candidate in early American history at the College of William and Mary. Recipient of the first Annual Prize at Ohio State for the outstanding senior honors thesis in the Department of History.

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## **Service**

### **Service in Professional Organizations**

2018-present, Allen Sharlin Book Prize Committee, Social Science History Association

2013-present, Grant Review Board, Harry Frank Guggenheim Foundation

2008-present, Editorial Board, *Crime, History, and Societies*.

2011-present, Editorial Board, *Homicide Studies*.

2014-2017, Board of Editors, *American Historical Review*

2014-15, 2016-17, Program Committee, American Society of Criminology

2014-2017, Research Awards Committee, Ohio Academy of History.

2011-2014, Chair, Distinguish Teaching Award Committee, Ohio Academy of History

2010-2011, Allan Sharlin Memorial Prize Committee, Social Science History Association

2010- ,Ohio Violent Death Reporting System Advisory Board

2010-2013, Advisory Board, Society for Historians of the Early American Republic

2008- , Society for the Scientific Detection of Crime, Columbus, Ohio

2009-2011, Youth Violence Prevention Advisory Board (Columbus)

2003, Nominating Committee, Social Science History Association

2002- , Co-founder and co-director, Historical Violence Database

1995-1997, ABC-Clio America: History and Life Award Committee, Organization of American Historians

1987-1993, Chair, Methods and Theory Network, Social Science History Association

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1987, Program Committee, Social Science History Association

### **Reviews of Manuscripts**

American Historical Review  
Journal of American History  
William and Mary Quarterly  
Journal of the Early Republic  
Social Science History  
Journal of Interdisciplinary History  
Historical Methods  
Journal of Women's History  
Journal of the Family  
Crime, History, and Societies  
European Journal of Criminology  
American Journal of Sociology  
Sociological Quarterly  
Criminology  
Criminal Justice Review  
Journal of Criminal Law and Criminology  
Law and Social Inquiry  
Homicide Studies  
International Criminal Justice Review  
International Journal of Law, Crime, and Justice  
Law and Society Review  
City and Community  
Eras Review  
Western Historical Quarterly  
Canadian Journal of Sociology  
Journal of the Gilded Age

### **Memberships in Professional Organizations (current)**

American Historical Association  
Organization of American Historians  
Social Science History Association  
European Social Science History Association  
American Society of Criminology  
Homicide Studies Working Group  
American Association for the Advancement of Science

### **Service at Ohio State University**

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**Department**

2006-2010, 2018-present, Undergraduate Placement / Enhancement Officer

1994-2015, 2018-present, Undergraduate Teaching Committee

2017-2018, Chair of Grievance Committee

2015-2017, 1991-1993, Chair of Graduate Studies

2012-2013, Chair of Undergraduate Studies

2011-2013, Advisory Committee and Salary Committee

1987-1991, History Department Promotion & Tenure Committee

**College of Humanities**

2007-2009, Curriculum Committee, College of Humanities

2002-2005, College of Humanities Computing Advisory Committee

1996-1997, College of Humanities Committee on the Center for the Study and Teaching of Writing, 1996-7; Affiliated Faculty Member, 2000-

**College of Arts and Sciences**

2006-2009, Alternate, Arts and Sciences Faculty Senate

2006- , Advisory Board, Criminal Justice Research Center, Department of Criminology and Sociology

2004- , Fellow, Center for Law, Policy, and Social Science, Moritz College of Law

2000- , Fellow, Criminal Justice Research Center, College of Social and Behavior Sciences

**Graduate School**

2018- , Graduate Awards Review Committee

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**Ohio Department of Higher Education**

2020- , Transfer Assurance Guide Review Panel, Ohio Articulation and Transfer Network

**Service at Grinnell College**

Chairman, African-American Studies Committee

Rosenfield Program on Public Affairs Committee

Faculty-Trustee Committee

**Community Service**

2001-2008, Chair, Community Services Advisory Commission, City of Dublin: advises City Council on all matters concerning utilities, policing, transportation, parks, recreation, waste management, etc.,

2004-present, Green Team, environmental projects volunteer organization, City of Dublin

2003-12, Committee to create an Indian burial mound and pioneer historic park at the Wright-Holder earthworks, City of Dublin

1997-present, Assistant Scoutmaster, Troop 299, Dublin / Citizenship Merit Badge Counselor / Eagle Scout Association / Philmont Staff Association / Distinguished Service Award, 2014 / Meritorious Service Award, 2006 / Bridge Builder Award, 2002

1997-2003, Good Schools Committee, Dublin City Schools, campaign committee for school bond and levy issues

1995-2005, President, Citizens for Dublin, city-wide association of civic association officers and city commission members

1995-1998, Vice-Chair, Transportation Task Force, City of Dublin

1995-1997, Community Plan Steering Committee, City of Dublin



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1988-present, President / Vice President / Trustee, East Dublin Civic Association

1987-present, Nature Conservancy / Volunteer Service Awards / Volunteer Crew Leader

### **Outreach / Media Appearances**

Testimony to Oversight Committee of the Ohio Senate, December 22, 2020, on so-called “Stand Your Ground” laws.

B.R.E.A.D. (an interfaith organization dedicated to Building Responsibility Equality and Dignity), January 13, 2020, on gun violence in central Ohio.

Testimony to Federalism Committee of the Ohio House of Representatives, June 12, 2019, on concealed carry laws.

Worthington Senior Citizen Center, Inequality in the U.S., April 15, 2019

Canfield Residence Hall, Discussion of History of Criminal Enterprise in the U.S. with Undergraduate Students, April 10, 2019

“Gun Ownership in Decline,” *Columbus Dispatch*, December 11, 2017.

“How the Erosion of Trust Leads to Murders and Mass Shootings,” invited editorial, *Washington Post*, October 6, 2017

“Mass Murder in American History,” CSpan-3, April 2, 2017

All Sides with Ann Fisher, WOSU Radio, “Mass Murder and Terrorism,” December 9, 2015 and June 13, 2106; “The Recent Rise in Homicide in the United States,” March 14, 2017.

Consultant for the TLC Channel, “Who Do You Think You Are Anyway?” 2013-2014

Appeared on the CSPAN Book Channel on September 1, 2012 (<http://www.c-span.org/LocalContent/Columbus/>)

Appeared on the History Channel, “Seven Deadly Sins,” January 3, 2009 (A&E Home Video)

“It’s No Mystery: Why Homicide Declined in American Cities during the First Six Months of 2009,” History News Network, November 22, 2009

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(<http://cjrc.osu.edu/researchprojects/hvd/AHSV/It's%20No%20Mystery%2011-22-2009%205-2010.pdf> and <http://cjrc.osu.edu/researchprojects/hvd/AHSV/It's%20No%20Mystery%20Further%20Thoughts%201-1-2010%205-2010.pdf>)

Radley Balko, editor of reason.com, named *American Homicide* the best book of 2009 (<http://reason.com/archives/2009/12/30/the-year-in-books>)

“American Homicide,” address to Columbus Rotary Club, October 24, 2011

Radio interviews: Execution Watch with Ray Hill on KPFT Houston, Texas, and WPFW Washington, D.C., Nov. 10, 2009; Focus 580 with David Inge, WILL, Champaign-Urbana, Illinois, December 7, 2009; RadioWest with Doug Fabrizio, KUER and XM Public Radio Channel 133, Salt Lake City, Utah, Dec. 17, 2009; The Mark Johnson Show of the Radio Vermont Group, WDEV, Waterbury, Vermont, Dec. 30, 2009; The Current with Anna Maria Tremonti on the CBC, Toronto, Canada, January 6, 2010; The Marc Steiner Show on WEAA in Baltimore, January 26, 2010; by ABC Radio, Sydney, Australia, interviewed on March 3, 2010 for broadcast the week of March 8, 2010; by the Extension with Dr. Milt Rosenberg on WGN Radio 720 AM Chicago, broadcast December 9, 2010; the Gil Gross Show, KKSF Radio 910 AM, San Francisco, July 27, 2012; and The Marc Steiner Show on WEAA in Baltimore, December 17, 2012; *American Homicide* was the subject of an editorial by op-ed writer Gregory Rodriguez in the *Los Angeles Times*, Sunday, April 12, 2010 (<http://www.latimes.com/news/opinion/commentary/la-oe-rodriguez12-2010apr12,0,3217212.column>)

*American Homicide* was the subject of an editorial by Raina Kelley in *Newsweek*, Nov. 5, 2009 (<http://www.newsweek.com/id/221271>).

*American Homicide* was cited favorably in the *New York Times Sunday Magazine* in an article by Jeffrey Rosen, "Prisoners of Parole," January 10, 2010; and in the *Washington Post*, Nov. 22, 2009

Newspaper articles: quoted and/or reviewed in the *Washington Post*, the *Washington Times*, the *National Review*, the *Economist*, the *Wall Street Journal*, the *Boston Globe*, the *Chicago Tribune*, the *San Francisco Chronicle*, the *Los Angeles Times*, the *New York Times*, *New York Newsday*, the *Chronicle of Higher Education*, and the *Columbus Dispatch*, which ran a front-page article on Roth's work in a Sunday edition

## **EXHIBIT 13**

1 ROB BONTA  
Attorney General of California  
2 MARK R. BECKINGTON  
Supervising Deputy Attorney General  
3 ROBERT L. MEYERHOFF  
Deputy Attorney General  
4 State Bar No. 298196  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013-1230  
Telephone: (213) 269-6177  
6 Fax: (916) 731-2144  
E-mail: Robert.Meyerhoff@doj.ca.gov  
7 *Attorneys for Defendant Rob Bonta in his*  
8 *official capacity as Attorney General of the*  
*State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,  
18

19 v.

20 **ROB BONTA, in his official capacity as**  
21 **Attorney General of the State of**  
**California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 17-cv-1017-BEN-JLB

**DECLARATION OF ROBERT**  
**SPITZER**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                                   **DECLARATION OF ROBERT SPITZER**

2           I, Robert Spitzer, declare under penalty of perjury that the following is true  
3 and correct:

4           1.     I have been asked by the California Department of Justice to render an  
5 opinion on the history of firearms restrictions enacted in the early twentieth century,  
6 addressing machine guns (fully automatic firearms), semiautomatic firearms, and  
7 ammunition feeding devices, and tracing those regulations back to earlier hardware  
8 and use restrictions on other types of weapons enacted in the nineteenth century and  
9 earlier.

10          2.     This declaration is based on my own personal knowledge and  
11 experience, and if I am called to testify as a witness, I could and would testify  
12 competently to the truth of the matters discussed in this declaration.

13          3.     I have been retained by the California Department of Justice to render  
14 expert opinions in this case. I am being compensated at a rate of \$500 per hour.

15                                   **BACKGROUND AND QUALIFICATIONS**

16          4.     I am a Distinguished Service Professor of Political Science Emeritus at  
17 the State University of New York at Cortland. I earned my Ph.D. in Government  
18 from Cornell University. I reside in Williamsburg, Virginia. A copy of my  
19 curriculum vitae is attached as Exhibit A to this Declaration.

20          5.     I have been studying and writing about gun policy for over thirty  
21 years. My first publication on the subject appeared in 1985. Since then, I have  
22 published six books and over one hundred articles, papers, and essays on gun  
23 policy. My expertise includes the history of gun laws, gun policy in American  
24 politics, and related historical, legal, political, and criminological issues. My book,  
25 *The Politics of Gun Control*, has been in print since its initial publication in 1995.  
26 It examines firearms policy in the United States through the lenses of history, law,  
27 politics, and criminology. The eighth edition of the book was published in 2021 by  
28 Routledge Publishers. My two most recent books on gun policy, *Guns across*

1 *America* (Oxford University Press, 2015) and *The Gun Dilemma* (Oxford  
2 University Press, 2023), both deal extensively with the study of historical gun laws.  
3 I am frequently interviewed and quoted in the national and international media on  
4 gun-related matters. For over twenty years, I have been a member of the National  
5 Rifle Association and of Brady (formerly, the Brady Campaign to Prevent Gun  
6 Violence).

7 6. I have provided written testimony as an expert witness in *Worman v.*  
8 *Healey*, No. 1:17-10107-WGY (D. Mass.), which concerned the constitutionality of  
9 Massachusetts' restrictions on assault weapons, and in *Miller v. Bonta*, No. 3:19-  
10 cv-01537-BEN-JLB, which concerns the constitutionality of California's  
11 restrictions on assault weapons. I have co-authored amicus briefs in numerous  
12 cases, including *Nordyke v. King*, U.S. Court of Appeals, Ninth Circuit, 319 F.3d  
13 1185 (2003); *Republic of Iraq et al. v. Beatty et. al.*, U.S. Supreme Court, 556 U.S.  
14 848 (2009); *McDonald v. Chicago*, U.S. Supreme Court, 561 U.S. 742 (2010); *Ezell*  
15 *v. Chicago*, U.S. Court of Appeals for the Seventh Circuit, 651 F.3d 684 (2011);  
16 and *People of the State of Illinois v. Aguilar*, Illinois Supreme Court, No. 08 CR  
17 12069 (2012).

18 7. I have also presented written testimony to the U.S. Congress on "The  
19 Second Amendment: A Source of Individual Rights?" submitted to the Judiciary  
20 Committee, Subcommittee on the Constitution, Federalism, and Property Rights,  
21 U.S. Senate, Washington, D.C., September 23, 1998; "Perspectives on the 'Stand  
22 Your Ground' Movement," submitted to the Judiciary Committee, Subcommittee  
23 on the Constitution, Civil Rights and Human Rights, U.S. Senate, Washington,  
24 D.C., October 29, 2013; and "The Hearing Protection Act to Deregulate Gun  
25 Silencers," submitted to Committee on Natural Resources, Subcommittee on  
26 Federal Lands, the U.S. House of Representatives, Hearings on the Sportsmen's  
27 Heritage and Recreational Enhancement Act (SHARE Act), Washington, D.C.,  
28 September 12, 2017.

## OPINIONS

### I. INTRODUCTION

1. The current controversy surrounding legislative efforts to restrict semi-automatic assault weapons and large capacity magazines would seem to be a purely contemporary matter, responding to the modern phenomenon of mass shootings. The effort to restrict such weapons was sparked in part by a shooting at an elementary school in Stockton, California in 1989, when a man armed with an AK-47 and a handgun killed five children and wounded thirty-three others. Later that year, California enacted the first assault weapons ban in the country. Five years later, Congress enacted a limited ten year ban.<sup>1</sup> As of this writing, eight states plus the District of Columbia have similar bans in place.<sup>2</sup> These jurisdictions represent approximately 89 million people, or approximately 26.8% of the U.S. population.<sup>3</sup> Twelve states plus the District of Columbia restrict large capacity magazines

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<sup>1</sup> Robert J. Spitzer, *The Politics of Gun Control*, 8<sup>th</sup> ed. (NY: Routledge, 2021), 25-26, 205-11.

<sup>2</sup> Giffords Law Center, Assault Weapons, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/>; Robert J. Spitzer, *The Gun Dilemma* (NY: Oxford University Press, 2023), 14-15. The nine American jurisdictions with assault weapons bans are: California, Connecticut, Delaware, the District of Columbia, Hawaii, Maryland, Massachusetts, New Jersey, and New York. Notably, the U.S. House of Representatives passed a renewed federal assault weapons ban with magazine limitations in 2022 (H.R. 1808, 117th Cong. (2022)). Delaware recently enacted its assault weapons and large-capacity magazine restrictions in June 2022. See Governor Carney Signs Package of Gun Safety Legislation (June 30, 2022), <https://news.delaware.gov/2022/06/30/governor-carney-signs-package-of-gun-safety-legislation/>.

<sup>3</sup> See U.S. Census, National Population Totals and Components of Change: 2020-2021, [https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html#par\\_textimage\\_2011805803](https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html#par_textimage_2011805803) (2021 state population estimates). The total population in these jurisdictions is estimated to be 88,976,315 out of a U.S. total of 331,501,080.



1 (LCMs).<sup>4</sup> These jurisdictions represent more than 103 million individuals, or  
2 approximately 31.2% of the U.S. population.<sup>5</sup> And in 2022, the U.S. House of  
3 Representatives passed a renewed nationwide assault weapons ban with LCM  
4 restrictions.<sup>6</sup>

5       2. These recent efforts to restrict assault weapons and LCMs are simply  
6 the latest chapter in a centuries-long effort to protect the public from harm and to  
7 dampen weapons-related criminality. The pattern of criminal violence and  
8 concerns for public safety leading to weapons restrictions is not new; in fact, it can  
9 be traced back to the Nation's beginnings. While the particular weapons  
10 technologies and public safety threats have changed over time, governmental  
11 responses to the dangers posed by certain weapons have remained constant.  
12 Current restrictions on assault weapons and detachable ammunition magazines are  
13 historically grounded. They are part of a pattern in America's history of legislative  
14 restrictions on particular weapons stretching back centuries.

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18       <sup>4</sup> Giffords Law Center, Large Capacity Magazines,  
19 [https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-](https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/)  
20 [capacity-magazines/](https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/); Spitzer, *The Gun Dilemma*, 30. The thirteen jurisdictions are  
21 California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii,  
22 Maryland, Massachusetts, New Jersey, New York, Rhode Island, Vermont, and  
23 Washington. With two exceptions, all of these restrictions impose a ten-round limit  
24 on magazines, as did the 1994 federal law, and Hawaii's restrictions apply to only  
25 handguns.

26       <sup>5</sup> U.S. Census, National Population Totals and Components of Change: 2020-  
27 2021, [https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-](https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html#par_textimage_2011805803)  
28 [total.html#par\\_textimage\\_2011805803](https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html#par_textimage_2011805803) (2021 state population estimates). The total  
population in these jurisdictions is estimated to be 103,503,256 out of a U.S. total  
of 331,501,080.

<sup>6</sup> H.R. 1808, 117th Cong. (2022).

1 **II. REGULATORY HISTORY OF FULLY AUTOMATIC AND SEMI-AUTOMATIC**  
2 **FIREARMS (EARLY TWENTIETH CENTURY)**

3 3. A clear example of this historical pattern is provided by early  
4 twentieth-century restrictions related to fully automatic firearms. While weapons  
5 capable of firing rounds in rapid succession can be traced to guns of the late  
6 nineteenth and early twentieth centuries, like the hand-cranked, multi-barreled  
7 Gatling gun which could fire up to 200 rounds per minute,<sup>7</sup> it and its successors  
8 were military weapons designed to be used in combat and fired from a tripod or  
9 similar supporting apparatus, owing to the Gatlin gun's size and weight. Strictly  
10 speaking, guns like the Gatling gun were not fully automatic as they did not fire a  
11 continuous stream of bullets while depressing a gun trigger. The development of a  
12 fully automatic machine gun for battlefield use, capable of firing all of its rounds  
13 from a single barrel and with a single trigger pull, came to fruition during World  
14 War I, and to devastating effect, where tripod-mounted machine guns on the  
15 battlefield, like the Maxim, which initially fired 200-400 rounds per minute but  
16 later 400-600 rounds per minute from a gun weighing roughly 100 pounds.<sup>8</sup>

17 4. Out of World War I came a practical, lighter-weight, reliable, hand-  
18 held, fully automatic weapon: the Thompson submachine gun, widely known as the  
19 Tommy gun. Though it was developed for use in World War I, it came too late in

20 <sup>7</sup> The Gatling gun, a manually operated, hand-cranked machine gun, was  
21 adopted by the U.S. Army in 1866, and was utilized in warfare against Native  
22 Americans and the Spanish-American War of 1898. Richard W. Stewart, *American*  
23 *Military History, Vol. I: The U.S. Army and the Forging of a Nation, 1775-1917*  
(Washington, D.C.: Center of Military History, 2008), 367-68; "Gatling Gun,"  
24 *History.com*, September 9, 2021, <https://www.history.com/topics/american-civil-war/gatling-gun>.

25 <sup>8</sup> Donald M. Snow and Dennis M. Drew, *From Lexington to Desert Storm:*  
26 *War and Politics in the American Experience* (Armonk, NY: M.E. Sharpe, 1994),  
27 127; "How The Machine Gun Changed Combat During World War I," Norwich  
28 University Online, October 15, 2020, <https://online.norwich.edu/academic-programs/resources/how-machine-gun-changed-combat-during-world-war-i>.

1 the war to have much effect. Its inventor, John Thompson, patented his .45 caliber  
2 gun in 1920.<sup>9</sup> The Tommy gun was initially unregulated after World War I and  
3 made available for civilian purchase, typically with either a 20-30 round stick  
4 magazine or a 100-round drum magazine. (The U.S. military showed little interest  
5 in acquiring the weapon, as the military largely demobilized and contracted sharply  
6 in size after the war.<sup>10</sup>) It was only at this point—in the early 1920s—that such  
7 hand-held weapons operated reliably, were made available to civilians, and began  
8 to circulate in society,<sup>11</sup> though sales in the early 1920s were sluggish. By 1925,  
9 Thompson’s marketing company, Auto Ordnance, had sold only about 3,000 of the  
10 15,000 it had manufactured up to this point, including to police forces and  
11 individuals.<sup>12</sup> Before the early 1920s, these weapons were unregulated for the  
12 obvious reason that they did not exist or were not circulating widely in society.  
13 When they did begin to circulate, however, their uniquely destructive capabilities  
14 rapidly became apparent, especially to the emergent Prohibition-fueled gangster  
15 organizations of the 1920s. Another automatic weapon developed for World War I  
16 was the Browning Automatic Rifle (BAR). It fired a .30-06 caliber round, could  
17 receive a 20-round box magazine, and could fire up to 650 rounds per minute. The  
18

19  
20 <sup>9</sup> Matthew Moss, “From Gangland to the Battlefield — 15 Amazing Facts  
21 About the Thompson Submachine Gun,” *Military History Now*, January 16, 2015,  
22 [https://militaryhistorynow.com/2015/01/16/from-gangland-to-the-battlefield-15-  
amazing-facts-about-the-thompson-submachine-gun/](https://militaryhistorynow.com/2015/01/16/from-gangland-to-the-battlefield-15-amazing-facts-about-the-thompson-submachine-gun/).

23 <sup>10</sup> John Ellis, *The Social History of the Machine Gun* (NY: Pantheon, 1975),  
149-52.

24 <sup>11</sup> Peter Suci, “The Thompson Submachine Gun: Made for the U.S. Postal  
25 Service?” *The National Interest*, July 3, 2020,  
26 [https://nationalinterest.org/blog/reboot/thompson-submachine-gun-made-us-postal-  
service-164096](https://nationalinterest.org/blog/reboot/thompson-submachine-gun-made-us-postal-service-164096).

27 <sup>12</sup> Lee Kennett and James LaVerne Anderson, *The Gun in America*  
28 (Westport, CT: Greenwood Press, 1975), 203.

1 BAR first appeared on the battlefield in 1918.<sup>13</sup> It, too, made its way into civilian  
 2 life and found favor among criminals and gangsters in the 1920s and early 1930s.<sup>14</sup>  
 3 Like contemporary assault weapons and their use in mass shootings, guns like the  
 4 Tommy gun and the BAR were actually used relatively infrequently by criminals  
 5 generally, but when they were used, they exacted a devastating toll and garnered  
 6 extensive national attention, such as their use in the infamous St. Valentine's Day  
 7 massacre in Chicago in 1929.<sup>15</sup>

8 **A. State-Level and Nationwide Attempts to Regulate Automatic**  
 9 **and Semi-Automatic Firearms in the Early Twentieth**  
 10 **Century**

11 5. In response to the wider availability of firearms like the Tommy gun  
 12 and the BAR, between 1925 and 1934, at least 32 states enacted anti-machine gun  
 13 laws; eight of these laws were passed in 1927 alone (see Exhibits B and D). These  
 14 state (and eventual federal) enactments were anticipated, justified, and promoted by  
 15 the National Conference of Commissioners on Uniform State Laws, a national  
 16 organization formed in 1892 to provide “non-partisan, well-conceived and well-  
 17 drafted legislation that brings clarity and stability to critical areas of state statutory  
 18

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19 <sup>13</sup> Paul Richard Huard, “Browning Automatic Rifle: The Most Dangerous  
 20 Machine Gun Ever?” *The National Interest*, November 19, 2019,  
 21 [https://nationalinterest.org/blog/buzz/browning-automatic-rifle-most-dangerous-](https://nationalinterest.org/blog/buzz/browning-automatic-rifle-most-dangerous-machine-gun-ever-97662)  
 22 [machine-gun-ever-97662](https://nationalinterest.org/blog/buzz/browning-automatic-rifle-most-dangerous-machine-gun-ever-97662); “Browning automatic rifle,” *Britannica*, September 8,  
 2022, <https://www.britannica.com/technology/Browning-automatic-rifle>.

23 <sup>14</sup> Derek Avery, *Firearms* (Hertfordshire, England: Wordsworth Editions,  
 24 1995), 12. The BAR was a favorite of the notorious outlaws Bonnie and Clyde, for  
 25 example. Christian Oord, “The Weapons of Bonnie & Clyde & the Guns That  
 26 Stopped Them,” *War History Online*, April 26, 2019,  
[https://www.warhistoryonline.com/history/weapons-of-bonnie-and-](https://www.warhistoryonline.com/history/weapons-of-bonnie-and-clyde.html?A1c=1)  
[clyde.html?A1c=1](https://www.warhistoryonline.com/history/weapons-of-bonnie-and-clyde.html?A1c=1).

27 <sup>15</sup> Chris McNab, *Firearms and American Law Enforcement Deadly Force*  
 28 (NY: Osprey Publishing, 2009), 97-98.

law.”<sup>16</sup> (Today, the organization is known as the Uniform Law Commission.) In 1923, the Commission organized a special committee to draft a “Uniform Act to Regulate the Sale and Possession of Firearms.” In 1928, it issued a model law calling for the prohibition of the possession of “any firearm which shoots more than twelve shots semi-automatically without reloading.”<sup>17</sup> In 1930, it issued a model firearms act focusing on “guns of the pistol type.” In 1932, it issued a model act “intended not only to curb the use of the machine gun, but to make it unwise for any civilian to possess one of the objectionable type.” The Commission explained that, between 1923 and 1930, “the infant industry of racketeering grew to monstrous size, and with it the automatic pistol replaced the revolver, to be in turn displaced by a partly concealable type of machine gun-the Thompson .45 inch caliber submachine gun becoming most popular. . . .”<sup>18</sup>

6. Congress enacted a machine gun ban for the District of Columbia in 1932 which included as a machine gun “any firearm which shoots automatically or semiautomatically more than twelve shots without reloading.”<sup>19</sup> The National Rifle Association endorsed DC’s ban, stating “it is our desire [that] this legislation be enacted for the District of Columbia, in which case it can then be used as a guide throughout the states of the Union.”<sup>20</sup> In his testimony before Congress in 1934 on

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<sup>16</sup> Uniform Law Commission, About Us, <https://www.uniformlaws.org/aboutulc/overview>.

<sup>17</sup> Report of Firearms Committee, 38th Conference Handbook of the National Conference on Uniform State Laws and Proceedings of the Annual Meeting 422-23 (1928).

<sup>18</sup> “Uniform Machine Gun Act,” National Conference of Commissioners on Uniform State Laws, Forty-Second Annual Conference, Washington, D.C., October 4-10, 1932, [http://www.titleii.com/bardwell/1932\\_uniform\\_machine\\_gun\\_act.txt](http://www.titleii.com/bardwell/1932_uniform_machine_gun_act.txt).

<sup>19</sup> “Hearings Before the Committee on Ways and Means, National Firearms Act, H.R. 9066,” U.S. House of Representatives, April 16, 18, May 14, 15, and 16, 1934 (Washington, D.C.: GPO, 1934), 45 ; 47 Stat. 650, ch. 465, §§ 1, 14 (1932).

<sup>20</sup> S. Rep. No. 72-575, at 5-6 (1932).

1 the bill that became the National Firearms Act, NRA vice president Milton A.  
2 Reckord extolled his organization's role in passing the 1932 D.C. law, saying, ". . .  
3 the association I represent is absolutely favorable to reasonable legislation. We are  
4 responsible for the uniform firearms act. . . . in the District of Columbia. It is on  
5 the books now."<sup>21</sup>

6 7. In 1934, Congress enacted the National Firearms Act, which imposed  
7 a series of strict (and effective<sup>22</sup>) requirements on the civilian acquisition and  
8 general circulation of fully automatic weapons, like the Tommy gun. The National  
9 Firearms Act imposed a tax on the manufacture, sale, and transfer of listed  
10 weapons, including machine guns, sawed-off shotguns and rifles, silencers, and  
11 "any other weapons" with certain firing capabilities. Such weapons had to be  
12 registered with the Treasury Department, and the owners fingerprinted and subject  
13 to a background check, with the payment of a \$200 tax.<sup>23</sup> The early models of the  
14 Tommy gun could fire "an astounding 1,500 rounds per minute. A Tommy gun  
15 could go through a 100-round drum magazine in four seconds. Later versions fired  
16 600 to 700 rounds per minute."<sup>24</sup>

17 8. In his opening statement to the Ways and Means Committee of the  
18 U.S. House of Representatives, Attorney General Homer Cummings made clear  
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21 <sup>21</sup> "Hearings Before the Committee on Ways and Means," 36.

22 <sup>22</sup> Philip J. Cook and Kristin A. Goss, *The Gun Debate*, 2<sup>nd</sup> ed. (NY: Oxford  
23 University Press, 2020), 13; Spitzer, *The Politics of Gun Control*, 195-96.  
24 According to the ATF's national registry of machine guns, 726,951 are registered  
25 with the government as of 2020. Such weapons are rarely used in crimes. Firearms  
26 Commerce in the United States Annual Statistical Update 2020, United States  
Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, 15,  
<https://www.atf.gov/file/149886/download>.

27 <sup>23</sup> 48 Stat. 1236.

28 <sup>24</sup> Moss, "From Gangland to the Battlefield."



1 that the bill under consideration was designed to fight the epidemic of gun crime  
2 where criminals could evade capture by crossing state lines:

3 The development of late years of the predatory criminal who passes  
4 rapidly from State to State, has created a situation which is giving  
5 concern to all who are interested in law and order. . . . there are more  
6 people in the underworld today armed with deadly weapons, in fact,  
7 twice as many, as there are in the Army and the Navy of the United  
8 States combined. . . . In other words, roughly speaking, there are at least  
9 500,000 of these people who are warring against society and who are  
10 carrying about with them or have available at hand, weapons of the most  
11 deadly character.<sup>25</sup>

12 As one member of the committee observed, “The question in my mind and I think  
13 in the majority of the committee is what we can do to aid in suppressing violations  
14 by such men as [John] Dillinger and others.”<sup>26</sup>

15 9. To address the problem, the original version of the bill proposed  
16 regulating both semi-automatic and fully automatic firearms, as it defined restricted  
17 machine guns this way: “The term ‘machine gun’ means any weapon designed to  
18 shoot automatically or semiautomatically 12 or more shots without reloading.”<sup>27</sup>  
19 The final version of the bill limited restrictions to fully automatic firearms.  
20 Contemporary assault weapons that fire semi-automatically, like AR-platform  
21 rifles, are excluded from the National Firearms Act.

22 10. In addition to the National Firearms Act’s restrictions on fully  
23 automatic weapons, during this same time period, at least seven states plus the  
24 District of Columbia, and as many as eleven states, enacted laws restricting semi-

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25 <sup>25</sup> “Hearings Before the Committee on Ways and Means,” 4. The version of  
26 the bill that appears on page 1 of the Hearings had this definition of machine gun:  
27 “The term ‘machine gun’ means any weapon designed to shoot automatically or  
28 semiautomatically twelve or more shots without reloading.”

<sup>26</sup> “Hearings Before the Committee on Ways and Means,” 42.

<sup>27</sup> Ibid., 52.



1 automatic weapons (see Exhibit B).<sup>28</sup> The reason for restricting semi-automatic  
2 firearms is not hard to discern. With the exception of the District of Columbia's  
3 restrictions on semi-automatic weapons, these restrictions all appeared in the same  
4 statutes as those restricting fully automatic weapons, which utilize the same  
5 fundamental firearms technology: an action that automatically loads a new round  
6 into the chamber after each shot is fired, potentially with the use of detachable  
7 ammunition magazines or similar feeding devices, and is capable of firing  
8 numerous rounds without reloading.<sup>29</sup>

9 11. As the prior discussion reveals, the regulation of automatic and semi-  
10 automatic weapons in the 1920s and 1930s was closely tied to the enhanced firing  
11 capacity of these weapons and the attractiveness (and use) of these weapons by  
12 criminals at that time. By that time, gun technology was now available that made it  
13 possible for ammunition to be reliably fired in rapid succession and guns to be  
14 reloaded through interchangeable ammunition magazines or similar devices.  
15 Again, the lesson is the same: once these technologies began to spread in civil  
16 society, regulatory efforts proliferated.

17 **B. State Regulation of Ammunition Feeding Devices**

18 12. Restrictions on fully automatic and semi-automatic firearms were  
19 closely tied to restrictions on ammunition magazines or their equivalent, as both  
20 automatic and semi-automatic weapons are predicated on some kind of mechanical  
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22 <sup>28</sup> See also Robert J. Spitzer, "Gun Law History in the United States and  
23 Second Amendment Rights," *Law and Contemporary Problems* 80 (2017): 68-71.  
24 The language of the restrictions in Illinois, Maine, and South Carolina was  
25 ambiguous regarding whether they applied to semi-automatic weapons.

26 <sup>29</sup> Spitzer, *The Gun Dilemma*, 32-33. In 1913, Florida enacted this measure:  
27 "It shall, at any time, be unlawful to hunt game in Marion County with guns—  
28 known as Automatic guns." While an automatic weapon fires a continuous stream  
of bullets when the trigger is depressed, a semi-automatic weapon fires a single shot  
with each pull of the trigger.

1 loading function or device that automatically feeds new rounds into the firing  
 2 chamber after the previous round is fired. As is the case with contemporary state  
 3 limitations on ammunition magazine capacity, state laws enacted early in the  
 4 twentieth century imposed restrictions based on the number of rounds that could be  
 5 fired without reloading, ranging from more than one (Massachusetts and  
 6 Minnesota) up to a high of eighteen (Ohio).

7 13. Magazine firing limits were imposed in three categories of state laws  
 8 (see Table 1 below): twelve states plus the District of Columbia regulating semi-  
 9 automatic and fully automatic weapons (California, District of Columbia,  
 10 Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina,  
 11 Ohio, Rhode Island, South Carolina, South Dakota, and Virginia<sup>30</sup>); nine states  
 12 regulated fully automatic weapons only, where the regulation was defined by the  
 13 number of rounds that could be fired without reloading or by the ability to receive  
 14 ammunition feeding devices (Illinois, Minnesota, New Jersey, North Dakota,  
 15 Oregon, Pennsylvania, Texas, Vermont, and Wisconsin<sup>31</sup>); and four states restricted

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16 <sup>30</sup> 1933 Cal. Stat. 1169; Act of July 8, 1932, ch. 465, §§ 1, 8, 47 Stat. 650,  
 17 650, 652 (District of Columbia); Act of July 2, 1931, 1931 Ill. Laws 452, 452; Act  
 18 of July 7, 1932, no. 80, 1932 La. Acts 336; 1927 Mass. Acts 413, 413-14; Act of  
 19 June 2, 1927, no. 372, 1927 Mich. Pub. Acts 887, 888; Mich. Pub. Acts 1929, Act  
 20 No. 206, Sec. 3, Comp. Laws 1929; Act of Apr. 10, 1933, ch. 190, 1933 Minn.  
 21 Laws 231, 232; Act of Apr. 8, 1933, no. 64, 1933 Ohio Laws 189, 189; 1927 R.I.  
 22 Pub. Laws 256, 256; Act of Mar. 2, 1934, no. 731, 1934 S.C. Acts 1288; Uniform  
 23 Machine Gun Act, ch. 206, 1933 S.D. Sess. Laws 245, 245; Act of Mar. 7, 1934,  
 24 ch. 96, 1934 Va. Acts 137, 137. Two of these states enacted early laws focused on  
 25 such weapons' use in hunting. New Jersey had a 1920 law making it "unlawful to  
 26 use in hunting fowl or animals of any kind any shotgun or rifle holding more than  
 27 two cartridges at one time, or that may be fired more than twice without reloading."  
 28 1920 N.J. Laws 67, ch. 31, Section 9. North Carolina made it "unlawful to kill  
 quail with any gun or guns that shoot over two times before reloading" in 1917.  
 1917 N.C. Sess. Laws 309, ch. 209, Sec. 1.

<sup>31</sup> 1931 Ill. Laws 452-53, An Act to Regulate the Sale, Possession and  
 Transportation of Machine Guns, §§ 1-2; 1927 N.J. Laws 180-81, A Supplement to  
 (continued...)

1 all guns that could receive any type of ammo feeding mechanism or round feeding  
2 device and fire them continuously in a fully automatic manner (California, Hawaii,  
3 Missouri, and Washington State)<sup>32</sup>.

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21 an Act Entitled “An Act for the Punishment of Crimes,” ch. 95, §§ 1-2; 1931 N.D.  
22 Laws 305-06, An Act to Prohibit the Possession, Sale and Use of Machine Guns,  
23 Sub-Machine Guns, or Automatic Rifles and Defining the Same . . . , ch. 178, §§ 1-  
24 2; 1933 Or. Laws 488, An Act to Amend Sections 72-201, 72-202, 72-207; 1929  
25 Pa. Laws 777, §1; 1933 Tex. Gen. Laws 219-20, 1st Called Sess., An Act Defining  
26 “Machine Gun” and “Person”; Making It an Offense to Possess or Use Machine  
27 Guns. . . , ch. 82, §§ 1-4, § 6; 1923 Vt. Acts and Resolves 127, An Act to Prohibit  
28 the Use of Machine Guns and Automatic Rifles in Hunting, § 1; 1933 Wis. Sess.  
Laws 245, 164.01.

<sup>32</sup> 1933 Haw. Sess. Laws 117; 1929 Mo. Laws 170; Wash. 1933 Sess. Laws  
335.

**TABLE 1****AMMUNITION MAGAZINE RESTRICTIONS IN 23 STATES, 1917-1934<sup>33</sup>**

Semi-automatic and Fully Automatic Firearms (barred firearms holding more than the listed number of rounds or more without reloading)	Fully Automatic Firearms (barred firearms capable of firing the listed number of rounds or more without reloading or that could receive ammunition feeding devices)	All Firearms (any weapon capable of receiving rounds through certain named round-feeding devices)
-California (10 rounds; 1933) -District of Columbia (12 rounds; 1932) -Louisiana (8 rounds; 1932) -Massachusetts (1 round; 1927) -Michigan (16 rounds; 1927) -Minnesota (1 round; 1933) -New Jersey (2 rounds; hunting only; 1920) -North Carolina (2 rounds; hunting only; 1917) -Ohio (18 rounds; 1933) -Rhode Island (12 rounds; 1927) -South Carolina (8 rounds; 1934) -South Dakota (5 rounds; 1933) -Virginia (7 rounds; 1934)	-Illinois (8 rounds; 1931) -Minnesota (12 rounds; 1933) -New Jersey (any removable device holding rounds; 1927) -North Dakota (loadable bullet reservoir; 1931) -Oregon (2 rounds; 1933) -Pennsylvania (2 rounds; 1929) -Texas (5 rounds; 1933) -Vermont (6 rounds; 1923) -Wisconsin (2 rounds; 1933)	-California (1927) -Hawaii (1933) -Missouri (1929) -Washington State (1933)

See Exhibit D for statutory text.

<sup>33</sup> Including the District of Columbia. Note that California, Minnesota, and New Jersey appear twice in this table. The dataset from which this information is drawn ended in 1934, so it does not include any states that might have enacted similar restrictions after 1934. See Duke Law Center for Firearms Law, “Repository of Historical Gun Laws,” <https://law.duke.edu/gunlaws/>.

all firearms known as machine rifles, machine guns or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber *in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.*<sup>34</sup>

The other three states in this category (Hawaii, Missouri, Washington<sup>35</sup>) utilized this same description. In all, at least twenty-three states enacted twenty-six gun restrictions based on the regulation of ammunition magazines or similar feeding devices, and/or round capacity (see Table 1). The original version of the legislation that became the National Firearms Act of 1934, as noted earlier, included this definition of machine gun that encompassed both semi-automatic and fully automatic firearms: “The term ‘machine gun’ means any weapon designed to shoot automatically or semiautomatically 12 or more shots without reloading.”<sup>36</sup> (This text was derived from the law enacted by Congress for the District of Columbia in 1932, which also stipulated a 12 round limit, as noted previously.<sup>37</sup> The final version of the 1934 bill was limited to fully automatic firearms only and did not include any limitation by number of rounds fired.) Regulations concerning removable magazines and magazine capacity were in fact common as early as the 1920s—the period of time when these weapons and devices began to make their way into civilian life and also contributed to violence and criminality—as these

<sup>34</sup> 1927 Cal. Stat. 938 (emphasis added).

<sup>35</sup> 1933 Haw. Sess. Laws 117; 1929 Mo. Laws 170; Wash. 1933 Sess. Laws 335.

<sup>36</sup> “National Firearms Act,” Hearings Before the Committee on Ways and Means, House of Representatives, on H.R. 9066, April 16, 18, and May 14, 15, and 16, 1934 (Washington, D.C.: GPO, 1934), 52.

<sup>37</sup> Ibid., 45.

1 regulations were adopted by nearly half of all states, representing approximately  
2 58% of the American population at that time.<sup>38</sup>

3 **C. Lessons from the Regulation of Automatic and Semi-**  
4 **Automatic Firearms and Ammunition Feeding Devices in the**  
5 **Early Twentieth Century**

6 15. The lesson from this sequence of events early in the twentieth century  
7 demonstrates that changes in gun policy followed a series of steps that respond to  
8 developments in firearms technologies and their use in crime, each dependent on  
9 the previous step. *First*, a new gun or gun technology is invented. *Second*, it may  
10 then be patented, though the patenting of a design or idea by no means assures that  
11 it will proceed beyond this point. *Third*, it may then be developed with a focus on  
12 military applications and supplying military needs, not directly for civilian  
13 acquisition or use. *Fourth*, some military-designed weapons may then spread to, or  
14 be adapted to, civilian markets and use. *Finally*, if such weapons then circulate  
15 sufficiently in society to pose a safety, violence, or criminological problem or  
16 threat, calls for government regulation or restriction then may lead to gun  
17 policy/law changes. New gun laws are not enacted when firearm technologies are  
18 invented or conceived. They are enacted when those technologies circulate  
19 sufficiently in society to spill over into criminal or other harmful use, presenting  
20 public safety concerns that governments attempt to address through their police and  
21 policy-making powers.

22 16. This lesson is significant because some argue that the absence of  
23 government gun regulations in history—at the time of the invention of various  
24 weapons or weapons developments—means that regulations now are unjustifiable,  
25 or have no historical basis. For example, David Kopel argues that “[m]agazines of

26 <sup>38</sup> U.S. Census, Historical Population Change Data (1910-1920) (using 1920  
27 census data), [https://www.census.gov/data/tables/time-series/dec/popchange-data-](https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html)  
28 [text.html](https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html).

1 more than ten rounds are older than the United States.”<sup>39</sup> Drawing on examples like  
 2 a firearm “created around 1580” capable of firing sixteen “‘superposed’ loads”  
 3 (with each round stacked on top of the other); the Puckle gun said to fire eleven  
 4 shots and patented in 1718; the Girandoni air rifle, invented in the late 1700s; and  
 5 the Pepperbox pistol of the early 1800s,<sup>40</sup> Kopel suggests that “magazines of more  
 6 than ten rounds are older than the Second Amendment.”<sup>41</sup> Therefore, by Kopel’s  
 7 reckoning, since these weapons existed early in (or even before) the country’s  
 8 existence, and were not specifically regulated, ipso facto, today’s governments are  
 9 unable to regulate assault weapons, like AR-platform rifles, or magazines  
 10 exceeding certain capacities (typically, a ten-round limit).<sup>42</sup>

11 17. Kopel’s and similar arguments<sup>43</sup> fail for two sets of reasons. First, as  
 12 explained in the following section, this sort of narrative misrepresents the  
 13 availability and capabilities of these early weapons. Second, the account fails to  
 14 understand the relationship between firearms’ technological development, their  
 15 spread into civil society, and government gun policy. As one gun history expert  
 16 noted, “the guns of 1830 were essentially what they had been in 1430: single metal  
 17 tubes or barrels stuffed with combustible powder and projectiles” where “after

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 19 <sup>39</sup> David Kopel, “The History of Firearm Magazines and Magazine  
 20 Prohibitions,” *Albany Law Review* 78 (2014-2015): 851.

21 <sup>40</sup> *Ibid.*, 852-54.

22 <sup>41</sup> *Ibid.*, 849.

23 <sup>42</sup> *Ibid.*, 871-72 (“a court which today ruled that [10-round] magazines are  
 24 ‘dangerous and unusual’ would seem to have some burden of explaining how such  
 25 magazines, after a century and a half of being ‘in common use’ and ‘typically  
 possessed by law-abiding citizens for lawful purposes,’ became ‘dangerous and  
 unusual’ in the twenty-first century.”).

26 <sup>43</sup> Declaration of Ashley Hlebinsky in Support Of Plaintiffs’ Motion for  
 27 Preliminary Injunction, *Miller v. Becerra*, Case No. 3:19-cv-01537-BEN-JLB,  
 28 United States District Court For The Southern District Of California, filed  
 September 27, 2019 (Plaintiffs’ Trial Exhibit 2).



1 every shot, the shooter had to carry out a minimum of three steps: pour powder into  
2 the barrel; add a projectile. . .; then ignite the gunpowder and send the projectile on  
3 its way.”<sup>44</sup> The firearms and firearm feeding devices regulated in the early  
4 twentieth century represented a dramatically different type of firearm, capable of  
5 reliable, rapid fire utilizing interchangeable ammunition feeding devices.

6 **D. The History of Pre-Twentieth Century Firearms Technologies**

7 18. As researchers and experts of gun history have noted, experimental  
8 multi-shot guns existed in the eighteenth century (with multi-shot experimental  
9 designs dating back as much as two centuries earlier). Kopel’s example of a  
10 firearm from the late 1500s that could fire up to sixteen rounds is drawn from a  
11 book titled, *Firearms Curiosa*. But this book’s very title indicates why this  
12 narrative is irrelevant to the modern gun debate. The definition of “curiosa” is  
13 something that is rare or unusual. As the book’s author, Lewis Winant says, his  
14 book is about “oddity guns” and “peculiar guns.”<sup>45</sup> That is, they were anything but  
15 common, ordinary, or found in general circulation. Winant’s description of the  
16 sixteen shot gun from the 1500s is that “the first pull of the trigger” fires “nine  
17 Roman candle charges, a second pull will release the wheel on the rear lock and set  
18 off six more such charges, and finally a third pull will fire the one remaining  
19 shot.”<sup>46</sup> A “Roman candle charge” was defined by Winant as one where “the  
20 operator had no control of the interval between shots; he could not stop the firing  
21 once he had started it.”<sup>47</sup> In other words, this firing process was more like lighting  
22 the fuse of a string of firecrackers, where their ignition occurs in a manner that  
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24 <sup>44</sup> Jim Rasenberger, *Revolver: Sam Colt and the Six-Shooter That Changed*  
25 *America* (NY: Scribner, 2021), 3-4.

26 <sup>45</sup> Lewis Winant, *Firearms Curiosa* (New York: Bonanza Books, 1955), 8, 9.

27 <sup>46</sup> *Ibid.*, 168.

28 <sup>47</sup> *Ibid.*, 166.

1 cannot be controlled by the operator once the initial charge is ignited. Winant  
2 concludes: “Of all the ideas for producing multishot firearms the scheme of  
3 superimposing loads in one barrel is probably the oldest, the most discredited, the  
4 most frequently recurring, and also the most readily accepted as new.”<sup>48</sup>

5 19. An early multi-shot gun, the “Puckle Gun,” patented in 1718 in  
6 London by James Puckle, could fire nine rounds per minute (hardly comparable to  
7 the firing capabilities of semi- and fully automatic weapons of the early twentieth  
8 century or modern era). The patent drawing of this weapon shows it sitting on a  
9 tripod on the ground.<sup>49</sup> It was not a held-held weapon. In the patent, Puckle  
10 described it as “a portable Gun or Machine (by me lately invented) called a  
11 DEFENCE.”<sup>50</sup> It was indeed a military weapon, as Winant says: “Of the oddities  
12 among military weapons none has received more publicity than the Puckle gun. . . .  
13 The Puckle invention was probably the first crank-operated machine gun. It  
14 embodied several elements that closely resemble construction features of Gatling,  
15 Hotchkiss and other manually-operated machine guns.” Winant continued, “It is  
16 doubtful that any of the Puckle guns that may have been actually produced ever saw  
17 service. A different account of this weapon says: “There is in fact no record of such  
18 a gun ever having been built,”<sup>51</sup> although there are claims to the contrary. A  
19 contemporaneous poet, commenting on ‘Puckle’s Machine Company’, wrote ‘Fear  
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25 <sup>48</sup> Ibid., 166.

26 <sup>49</sup> Ibid., 220.

27 <sup>50</sup> Ibid., 219.

28 <sup>51</sup> Ellis, *The Social History of the Machine Gun*, 13.

1 not, my friends, this terrible machine. They're only wounded who have shares  
2 therein.”<sup>52</sup> This weapon “never advanced beyond the prototype stage.”<sup>53</sup>

3 20. In short, it was an experimental weapon designed for military use, and  
4 the patent's reference to “DEFENCE” was clearly a reference to military defense,  
5 not personal defense. As this account confirms, it was likely never even  
6 manufactured beyond perhaps a prototype. It was a failed effort, even though later  
7 gun inventors learned from its failure.

8 21. Kopel also cites the example of the Jennings multi-shot flintlock rifle  
9 from 1821, capable of firing up to twelve “superposed” shots before reloading.<sup>54</sup>  
10 Yet according to *Flayderman's Guide to Antique American Firearms*, its  
11 production quantity was so small as to be “unknown” and therefore is “extremely  
12 rare,” unsurprising since it utilized fatally defective “superposed” firing (discussed  
13 earlier) relying on twelve individual touchholes.<sup>55</sup> Similar problems plagued or  
14 doomed multi-shot flintlock pistols of the early nineteenth century. According to  
15 Carl P. Russell: “Flintlock revolving pistols had been given trials and some  
16 practical use very early in the nineteenth century, but the loose priming powder in  
17 the pan of each cylinder constituted a hazard that was never eliminated.”<sup>56</sup>

18 22. Another example often cited is the Girandoni (or Girardoni) air rifle, a  
19 military weapon developed for crack shots in the Austrian army that was capable of  
20

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21 <sup>52</sup> Winant, *Firearms Curiosa*, 219-21. See also “The Puckle Gun: Repeating  
22 Firepower in 1718,” December 25, 2016,  
<https://www.youtube.com/watch?v=GPC7KiYDshw>.

23 <sup>53</sup> Rasenberger, *Revolver*, 3.

24 <sup>54</sup> Kopel, “The History of Firearm Magazines and Magazine Prohibitions,”  
25 853.

26 <sup>55</sup> Norm Flayderman, *Flayderman's Guide to Antique American Firearms*, 9<sup>th</sup>  
ed. (Iola, IA: Gun Digest Books, 2007), 683.

27 <sup>56</sup> Carl P. Russell, *Guns on the Early Frontier* (Lincoln, NE: University of  
28 Nebraska Press, 1957), 91.

1 firing up to 20 rounds. One of these was taken along on the Lewis and Clark  
2 expedition of 1804-1806.<sup>57</sup> But these guns were a rarity, as they were extremely  
3 expensive, fragile, and complex, and few were made—no more than about 1,500.<sup>58</sup>  
4 In fact, the rifles never caught on as they proved to be impractical on the battlefield,  
5 and even more so for civilian use. To wit: “Leather gaskets needed to be constantly  
6 maintained and swelled with water to sustain pressure. Once empty the reservoirs  
7 required a significant effort and 1500 strokes to restore full power. A supply wagon  
8 was subsequently outfitted with a mounted pump to readily supply soldiers but this  
9 negated one of the key features—mobility. The rudimentary fabrication methods of  
10 the day engineered weak threading on the reservoir neck and this was the ultimate  
11 downfall of the weapon. The reservoirs were delicate in the field and if the riveted  
12 brazed welds parted the weapon was rendered into an awkward club as a last  
13 resort.”<sup>59</sup> It was pulled from military service by 1815.<sup>60</sup>

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17 <sup>57</sup> David Kopel, “The history of magazines holding 11 or more rounds:  
18 Amicus brief in 9th Circuit,” *Washington Post*, May 29, 2014,  
19 [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/)  
20 [history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/). The  
21 Girandoni air gun taken by Lewis and Clark was never used in combat or battle, but  
22 to impress the Native Americans they encountered. Whenever they planned to fire  
23 the gun, they were careful to prepare it before encountering Native Americans so  
24 that they were not aware of the extensive pre-fire preparations needed. See Stephen  
25 E. Ambrose, *Undaunted Courage* (NY: Simon and Schuster, 1996), 158, 160, and  
26 passim.

27 <sup>58</sup> Mike Markowitz, “The Girandoni Air Rifle,” *DefenseMediaNetwork*, May  
28 14, 2013, <https://www.defensemmedianetwork.com/stories/the-girandoni-air-rifle/>.

<sup>59</sup> John Paul Jarvis, “The Girandoni Air Rifle: Deadly Under Pressure,”  
*GUNS.com*, March 15, 2011, [https://www.guns.com/news/2011/03/15/the-](https://www.guns.com/news/2011/03/15/the-girandoni-air-rifle-deadly-under-pressure)  
[girandoni-air-rifle-deadly-under-pressure](https://www.guns.com/news/2011/03/15/the-girandoni-air-rifle-deadly-under-pressure).

<sup>60</sup> Markowitz, “The Girandoni Air Rifle.”

23. To take another example, the Volcanic repeating pistol, patented in 1854, was said to have the ability to fire up to “ten or greater rounds.”<sup>61</sup> The Volcanic Repeating Arms Company was founded in 1855, and it experimented with a number of design innovations. But the company was “short-lived” and went “defunct” in 1866, even though its partners included Horace Smith, Daniel B. Wesson, and Courtlandt Palmer.<sup>62</sup> Its patent and technological work were important for subsequent developments, especially for Smith and Wesson’s later work, but the actual weapons produced by Volcanic were few, flawed, and experimental,<sup>63</sup> dubbed “radical defects” by Winchester himself.<sup>64</sup> In 1857 and 1858, Volcanic produced 3,200 “flawed” repeaters, most of which “collected dust for many decades” until the company finally sold them for fifty cents each to employees.<sup>65</sup>

24. Another account laboring to establish early gun firing provenance asserts that “[s]emi-automatic technology was developed in the 1880s” with the “Mannlicher rifle. . . generally attributed to be the first semi-automatic rifle.”<sup>66</sup> Yet this “development” was initially a failure: “Ferdinand von Mannlicher’s Model 1885 self-loading rifle design” was “a failure, never seeing anything even resembling mass production.”<sup>67</sup> The true semi-automatic weapon did not become

<sup>61</sup> Declaration of Ashley Hlebinsky, *Miller v. Becerra*, 6 (Plaintiffs’ Trial Exhibit 2).

<sup>62</sup> Pamela Haag, *The Gunning of America* (NY: Basic Books, 2016), 51-52.

<sup>63</sup> “Volcanic Repeating Arms,” [https://military-history.fandom.com/wiki/Volcanic\\_Repeating\\_Arms](https://military-history.fandom.com/wiki/Volcanic_Repeating_Arms), n.d.; Flayderman, *Flayderman’s Guide to Antique American Firearms*, 303-5.

<sup>64</sup> Quoted in Haag, *The Gunning of America*, 56.

<sup>65</sup> Haag, *The Gunning of America*, 60.

<sup>66</sup> Declaration of Ashley Hlebinsky, *Miller v. Becerra*, 8 (Plaintiffs’ Trial Exhibit 2).

<sup>67</sup> Ian McCollum, “Mannlicher 1885 Semiauto Rifle,” *Forgotten Weapons*, (continued...)

1 feasible and available until the beginning of the twentieth century, and the primary  
2 market was the military.<sup>68</sup>

3 25. The more well-known “pepperbox,” a multi-shot firearm where the  
4 number of shots capable of being fired repeatedly coincided with the number of  
5 barrels bundled together, found some civilian market popularity in the early 1800s,  
6 but it was rapidly eclipsed by the superior Colt revolver. The reason: pepperboxes  
7 were “heavy, lumpy, and impractical.”<sup>69</sup> By another account, “because of its small  
8 bore, short range, and lack of accuracy, the pepperbox was by no means as  
9 satisfactory as a revolver for military use.”<sup>70</sup> Further, “[t]hey also had a nasty habit  
10 of discharging all their barrels at once. No shooter could be certain he would not  
11 get two or three innocent bystanders, as well as his intended victim.”<sup>71</sup> Indeed, the  
12 Colt revolver was “the first widely used multishot weapon,”<sup>72</sup> although it took  
13 decades for this and similar revolvers to catch on.

14 26. Colt’s technological developments notwithstanding, single shot guns  
15 were the ubiquitous firearm until after the Civil War, although some long gun  
16  
17  
18  
19

20 May 6, 2015, <https://www.forgottenweapons.com/mannlicher-1885-semiauto-rifle/>.

21 <sup>68</sup> Philip Schreier, “A Short History of the Semi-Automatic Firearm,”  
22 *America’s 1<sup>st</sup> Freedom*, July 2022, 32-39.

23 <sup>69</sup> Rasenberger, *Revolver*, 54.

24 <sup>70</sup> Lewis Winant, *Pepperbox Firearms* (New York: Greenberg Pub., 1952),  
25 30.

26 <sup>71</sup> Larry Koller, *The Fireside Book of Guns* (NY: Simon and Schuster, 1959),  
27 154. By another account, “it was a disconcerting but not uncommon experience to  
28 have all six barrels go off in unison.” Winant, *Pepperbox Firearms*, 32.

<sup>72</sup> Rasenberger, *Revolver*, 401.

1 repeaters appeared late in the Civil War.<sup>73</sup> Even so, the “standard infantry weapon  
2 [in the Civil War] remained the single-shot, muzzle-loaded weapon.”<sup>74</sup>

3 27. As noted, the idea of an available, affordable, reliable multi-shot  
4 firearm did not arise until the development of Colt’s multi-shot revolver in the  
5 1830s. Indeed, Colt biographer Jim Rasenberger says that Colt’s pistol was the first  
6 practical firearm that could shoot more than one bullet without reloading.<sup>75</sup> Even  
7 then, Colt could not readily manufacture multi-shot weapons for many years  
8 because he could find no market for them, either from the government or the public.  
9 The government, in fact, dismissed such firearms as mere “novelties.”<sup>76</sup> After an  
10 1837 test of Colt’s gun and others the government concluded that it was “entirely  
11 unsuited to the general purposes of the service.”<sup>77</sup> The government also rejected  
12 the weapon after tests in 1836, 1840, and 1850. Colt’s early failure to cultivate  
13 either a military or a civilian market in the U.S. drove him to bankruptcy and then  
14 to market his guns to European governments in the 1840s. The gun made  
15 appearances in the pre-Civil War West, yet even during the Civil War, “Colt’s  
16 revolver was a sideshow through most of the war. . . .”<sup>78</sup> And though the Colt-type  
17 revolver “had proved itself, the official sidearm of the United States Army [in the  
18

19  
20 <sup>73</sup> Kopel, “The history of magazines holding 11 or more rounds”; Kennett  
21 and Anderson, *The Gun in America*, 112-13.

22 <sup>74</sup> Snow and Drew, *From Lexington to Desert Storm*, 90. As Civil War  
23 historian James M. McPherson noted, even though some repeating rifles appeared  
24 in the Civil War as early as 1863, single-shot muzzle-loaders “remained the  
25 principal infantry weapons throughout the war.” *Battle Cry of Freedom* (NY:  
26 Oxford University Press, 1988), 475.

27 <sup>75</sup> Rasenberger, *Revolver*, 3-5, 401.

28 <sup>76</sup> Pamela Haag, *The Gunning of America* (NY: Basic Books, 2016), 24.

<sup>77</sup> Rasenberger, *Revolver*, 136.

<sup>78</sup> *Ibid.*, 390.



1 Civil War] remained a single shot pistol.”<sup>79</sup> It took the Colt’s use during the Civil  
2 War to finally spur the post-Civil War proliferation of the Colt-type revolver and  
3 similar firearms into society.<sup>80</sup>

4 28. While inventor Benjamin Henry claims credit for developing the first  
5 practical, lever action repeating rifle (patented in 1860), his competitor Winchester  
6 “deftly gutted” the Henry Arms Company, coopting it to form the Winchester Arms  
7 Company in 1866, paving the way for Winchester’s dominance.<sup>81</sup> The Winchester  
8 rifle could fire up to fifteen rounds without reloading. Yet the widely known  
9 Winchester 1873, “was designed for sale to the Government as a military arm.”<sup>82</sup> A  
10 gun whose legendary status wildly outdistanced its actual production and impact, it  
11 was nevertheless an important firearm in the late nineteenth century, although this  
12 “quintessential frontier rifle flourished later, in the ‘post-frontier’ early 1900s. Its  
13 celebrity biography backdated its diffusion and even its popularity.”<sup>83</sup> In fact, the  
14 slogan stating that the Winchester “won the West” was invented by a Winchester  
15 executive as a marketing ploy in 1919.<sup>84</sup> Additionally, the Winchester was not a  
16 semi-automatic firearm; it was a lever-action rifle that required the shooter to  
17 manipulate a lever in a forward-and-back motion before each shot. And when the  
18 gun was emptied, it had to be manually reloaded, one round at a time.<sup>85</sup> The  
19 Winchester Model 1905, then called a “self-loading” rifle, was a true semi-

20  
21 <sup>79</sup> Kennett and Anderson, *The Gun in America*, 91.

22 <sup>80</sup> Haag, *The Gunning of America*, 34-37, 46-64. As Haag said, “the Civil  
23 War saved” the gun industrialists (65).

24 <sup>81</sup> Haag, *The Gunning of America*, 96.

25 <sup>82</sup> Koller, *The Fireside Book of Guns*, 112.

26 <sup>83</sup> Haag, *The Gunning of America*, 179.

27 <sup>84</sup> *Ibid.*, 353.

28 <sup>85</sup> Normally, a Remington-type rifle is loaded from a feed ramp on the side of  
the rifle.

1 automatic firearm. It could receive a five or ten round box magazine, although  
2 from 1905 to 1920 only about 30,000 of the guns were made. Even in World  
3 War I, soldiers primarily used bolt-action one shot rifles that could fire about  
4 twelve rounds per minute.<sup>86</sup>

5 29. With all this, the Winchester was by no means universally embraced  
6 by long gun users. Indeed, “a good many westerners would have nothing to do  
7 with the early Winchesters or other repeaters, for reasons they considered very  
8 sound, and not until the 1880s did the repeating rifle assert its dominance over the  
9 single-shot breechloader.”<sup>87</sup> According to A.C. Gould, writing in 1892, single-shot  
10 rifles were: “less complicated, and less liable to get out of order; will shoot a  
11 greater variety of ammunition; will shoot uncrimped ammunition, patched or  
12 unpatched bullets; will permit the use of a longer barrel; an explosive bullet can be  
13 used; a greater range of rear sights on tang can be used.”<sup>88</sup>

14 30. The rise in the circulation of multi-shot handguns in society was  
15 accompanied by the rapid spread of concealed carry restrictions (see Exhibits B-E),  
16 especially in the post-Civil War period, precisely because of their contribution to  
17 escalating interpersonal violence.<sup>89</sup> By the end of the nineteenth century, virtually  
18

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19 <sup>86</sup> Robert Johnson and Geoffrey Ingersoll, “It’s Incredible How Much Guns  
20 Have Advanced Since The Second Amendment,” *Military & Defense*, December  
21 17, 2012, <https://finance.yahoo.com/news/incredible-much-guns-improved-since-174927324.html>; Phil Bourjaily, “Blast From the Past: Winchester Model 1905,”  
22 *Field & Stream*, January 11, 2019, <https://www.fieldandstream.com/blast-from-past-winchester-model-1905/>.

23 <sup>87</sup> Louis A. Garavaglia and Charles G. Worman, *Firearms of the American*  
24 *West, 1866-1894* (Albuquerque, NM: University of New Mexico Press, 1985), 129.

25 <sup>88</sup> Quoted in Garavaglia and Worman, *Firearms of the American West, 1866-*  
26 *1894*, 131.

27 <sup>89</sup> Dickson D. Bruce, *Violence and Culture in the Antebellum South* (Austin,  
28 TX: University of Texas Press, 1979); Randolph Roth, *American Homicide*  
(Cambridge, MA: Belknap Press, 2012), 218-219.

1 every state in the country prohibited or severely restricted concealed gun and other  
2 weapons carrying.<sup>90</sup> It was only in the post-World War I era when multi-shot semi-  
3 automatic and fully automatic long guns began to circulate appreciably in society  
4 and came to be associated with criminal use that they became a regulatory and  
5 public policy concern.

6 31. As noted earlier, the problems with arguments claiming that historical  
7 multi-shot weapons were both viable and commonly possessed before the late  
8 nineteenth century are two-fold: they misrepresent the actual past of the weapons  
9 cited, and even more importantly fail to understand the connection between gun  
10 technology developments and the steps leading up to changes in gun-related public  
11 policy to regulate threats posed by those developments. As discussed previously,  
12 that process has occurred, both historically and in the modern era, through a series  
13 of sequential steps.

14 32. First, a new gun or gun technology must be invented. Second, it is  
15 then normally patented, noting that there are many steps between a patent, actual  
16 gun production, distribution and dissemination. As Lewis Winant sardonically  
17 observed, “Many patents are granted for arms that die a-borning.”<sup>91</sup> And as gun  
18 expert Jack O’Connor wrote, “many types of guns were invented, produced and  
19 discarded through the early years of the development of the United States.”<sup>92</sup>  
20 Third, weapons development is historically tied to military need and military  
21 acquisition, not directly for civilian use or self-defense applications. Military  
22 weaponry is developed without consideration of potential civilian use and the  
23

24 \_\_\_\_\_  
25 <sup>90</sup> Spitzer, “Gun Law History in the United States and Second Amendment  
Rights,” 63-67.

26 <sup>91</sup> Winant, *Firearms Curiosa*, 36.

27 <sup>92</sup> Jack O’Connor, *Complete Book of Rifles and Shotguns* (NY: Harper &  
28 Row, 1961), 42.

1 consequences of dissemination in the civilian market.<sup>93</sup> Fourth, some military-  
2 designed weapons may then spill over into, or be adapted to, civilian markets and  
3 use. Fifth, if such weapons then circulate sufficiently to pose a public safety or  
4 criminological problem or threat, calls for government regulation or restriction then  
5 may lead to gun policy/law changes. This general sequence is echoed in works like  
6 the *Buyer's Guide to Assault Weapons*.<sup>94</sup>

7 33. Again, to simply assert or assume that past firearms  
8 design/development, invention, or patenting equals commonality, viability, or a  
9 measurable presence or impact on society, is a leap in logic without historical  
10 foundation. It would be as logical to reject modern governmental regulation of  
11 electric power through such government agencies as state power commissions and  
12 the Federal Energy Regulatory Commission because no such regulation was  
13 enacted around the time of Benjamin Franklin's experiments with electricity in the  
14 mid-eighteenth century. The fact that inventors worked on new firearm designs and  
15 modifications tells us nothing about the consequences of such designs for society  
16 and public policy. And the existence of such designs does not equal general  
17 availability, much less societal circulation and use of these weapons. Other  
18 weapons subject to government restriction in our history further illustrate these  
19 principles.

20  
21  
22  
23 <sup>93</sup> Note that the third step, and perhaps the second, do not apply to non-  
24 firearms weapons discussed here—in particular the Bowie knife and various clubs.  
25 These weapons were mostly not developed for military use, though Bowie knives,  
26 for example, were carried by some soldiers during the Civil War. Knives and clubs  
are far simpler technologically compared to firearms (and of course do not rely on  
ammunition) and thus were much more easily made, reproduced, and circulated.

27 <sup>94</sup> Phillip Peterson, *Buyer's Guide to Assault Weapons* (Iola, IA: Gun Digest  
28 Books, 2008), 4-7.

1 **III. HISTORICAL HARDWARE RESTRICTIONS ON KNIVES, BLUNT WEAPONS,**  
 2 **PISTOLS, AND TRAP GUNS IN THE EIGHTEENTH AND NINETEENTH**  
 3 **CENTURIES**

4 34. Similar to government regulation of certain types of firearms and  
 5 ammunition feeding devices in the early twentieth century, which occurred only  
 6 after the weapons technologies matured, entered the civilian market, and threatened  
 7 the public through criminal use, government regulation of other weapons typically  
 8 followed a version of this trajectory around the time of the ratification of the  
 9 Fourteenth Amendment in the 1860s and even earlier.

10 **A. Historical Restrictions on the Bowie Knife and Similar Long-**  
 11 **Bladed Knives**

12 35. The Bowie knife is generally credited with having been invented by  
 13 the brother of adventurer Jim Bowie, Rezin Bowie. The knife was named after Jim  
 14 Bowie, who reputedly killed one man and wounded another using a “big knife”  
 15 given to him by his brother in the alternately notorious or celebrated “Sandbar  
 16 Duel” in 1827.<sup>95</sup> Bowie died at the Alamo in 1836.

17 36. The “Bowie knife” rapidly became known in the 1830s for the  
 18 distinctive type of long-bladed single-edged knife with a hand guard identified with  
 19 Bowie, the man after whom the knife was named. The Bowie legend, the explosive  
 20 growth and spread of Bowie-related mythology (only magnified by his death at the  
 21 Alamo), and the knife’s distinctive features, encouraged its proliferation,<sup>96</sup> referred  
 22

23 \_\_\_\_\_  
 24 <sup>95</sup> “Bowie Knife,” *Encyclopedia of Arkansas*, n.d.,  
 25 <https://encyclopediaofarkansas.net/entries/bowie-knife-2738/>; William C. Davis,  
 26 *Three Roads to the Alamo* (NY: HarperCollins, 1998), 207-8. Davis persuasively  
 27 dismisses the claim of a blacksmith, James Black, that he invented or styled the  
 28 distinctive knife for Rezin Bowie (676-77).

<sup>96</sup> Virgil E. Baugh, *Rendezvous at the Alamo* (Lincoln, NE: University of  
 Nebraska Press, 1985), 39-63.

1 to by one historian as “the craze for the knives.”<sup>97</sup> As was true of other knives with  
 2 long, thin blades,<sup>98</sup> they were widely used in fights and duels, especially at a time  
 3 when single-shot pistols were often unreliable and inaccurate.<sup>99</sup> Indeed, such  
 4 knives were known as “fighting knives”<sup>100</sup> that were “intended for combat.”<sup>101</sup> In  
 5 the early nineteenth century “guns and knives accounted for a growing share of the  
 6 known weapons that whites used to kill whites.”<sup>102</sup> In 1834, for example, a grand  
 7 jury in Jasper County, Georgia deplored

8 the practice which is common amongst us with the young the middle  
 9 aged and the aged to arm themselves with Pistols, dirks knives sticks &  
 10 spears under the specious pretence of protecting themselves against  
 11 insult, when in fact being so armed they frequently insult others with  
 12 impunity, or if resistance is made the pistol dirk or club is immediately  
 13 resorted to, hence we so often hear of the stabbing shooting & murdering  
 14 so many of our citizens.<sup>103</sup>

15 37. Homicide rates increased in the South in the early nineteenth century,  
 16 as did laws restricting concealed weapons carrying. Dueling also persisted during  
 17 this time, even as the practice was widely deplored by religious and other groups, in

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18 <sup>97</sup> Davis, *Three Roads to the Alamo*, 583.

19 <sup>98</sup> Other such long-bladed, thin knives of varying configurations typically  
 20 named in laws barring their carrying included the Arkansas toothpick, the Spanish  
 21 stiletto, dirks, daggers, and the like.

22 <sup>99</sup> Davis, *Three Roads to the Alamo*, 164, 208; Baugh, *Rendezvous at the*  
 23 *Alamo*, 42; Karen Harris, “Bowie Knives: The Old West’s Most Famous Blade,”  
 24 *Oldwest*, n.d., <https://www.oldwest.org/bowie-knife-history/>; Norm Flayderman,  
 25 *The Bowie Knife* (Lincoln, RI: Andrew Mowbray, 2004), 485.

26 <sup>100</sup> Randolph Roth, *American Homicide* (Cambridge, MA: Harvard  
 27 University Press, 2009), 218.

28 <sup>101</sup> Flayderman, *The Bowie Knife*, 59.

<sup>102</sup> Roth, *American Homicide*, 218.

<sup>103</sup> Quoted in Roth, *American Homicide*, 218-19.

1 newspapers, by anti-dueling societies and political leaders.<sup>104</sup> Bowie knife expert  
 2 Norm Flayderman provides abundant and prolific evidence of the early criminal use  
 3 of Bowie knives in the 1830s, quoting from dozens of contemporaneous newspaper  
 4 and other accounts, and providing references to literally hundreds of additional  
 5 articles and accounts attesting to the widespread use of Bowie knives in fights,  
 6 duels, brawls and other criminal activities.<sup>105</sup> Flayderman concludes that, as early  
 7 as 1836, “most of the American public was well aware of the Bowie knife.”<sup>106</sup>  
 8 (Very much like contemporary assault weapons,<sup>107</sup> the Bowie knife’s notorious  
 9 reputation also, if perversely, fanned its sale and acquisition.<sup>108</sup>) All this led to  
 10 widespread enactment of laws prohibiting dueling in the states<sup>109</sup> and even in the  
 11 halls of Congress, where a constitutional amendment in the form of a joint  
 12 resolution prohibiting dueling was introduced as early as 1838. In 1839, Congress  
 13 passed a measure barring dueling in the District of Columbia.<sup>110</sup> Both pistols and  
 14 knives were prominently used in such affairs.<sup>111</sup>

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16 <sup>104</sup> Baugh, *Rendezvous at the Alamo*, 51.

17 <sup>105</sup> Flayderman, *The Bowie Knife*, 25-64; 495-502.

18 <sup>106</sup> *Ibid.*, 43.

19 <sup>107</sup> Ryan Busse, *Gunfight* (NY: Public Affairs, 2021), 12-15, 65; David  
 20 Altheide, “The cycle of fear that drives assault weapon sales,” *The Guardian*,  
 21 March 2, 2013, [https://www.theguardian.com/commentisfree/2013/mar/02/cycle-](https://www.theguardian.com/commentisfree/2013/mar/02/cycle-fear-assault-weapon-sales)  
 22 [fear-assault-weapon-sales](https://www.theguardian.com/commentisfree/2013/mar/02/cycle-fear-assault-weapon-sales); Rukmani Bhatia, “Guns, Lies, and Fear,” *American*  
*Progress*, April 24, 2019, <https://www.americanprogress.org/article/guns-lies-fear/>.

23 <sup>108</sup> Flayderman, *The Bowie Knife*, 46.

24 <sup>109</sup> A search for the word “duel” in the Duke Center for Firearms Law  
 25 database of old gun laws yields 35 results. See  
 26 <https://firearmslaw.duke.edu/repository/search-the-repository/>.

27 <sup>110</sup> H.R. 8, Joint Resolution Prohibiting Dueling, introduced March 5, 1838,  
 28 [https://history.house.gov/Records-and-Research/Listing/lfp\\_032/](https://history.house.gov/Records-and-Research/Listing/lfp_032/).

<sup>111</sup> Roth, *American Homicide*, 180-83, 210-17.



1           38. In the 1840 case of *Aymette v. State*, the Supreme Court of Tennessee  
2 upheld the conviction of William Aymette for wearing a Bowie knife concealed  
3 under his clothes under a state law of 1837-1838, ch. 137, sec. 2, providing “that, if  
4 any person shall wear any bowie-knife, or Arkansas toothpick, or other knife or  
5 weapon that shall in form, shape, or size resemble a bowie-knife or Arkansas  
6 toothpick, under his clothes, or keep the same concealed about his person such  
7 person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be  
8 fined in a sum not less than two hundred dollars, and shall be imprisoned in the  
9 county jail not less than three months and not more than six months.”<sup>112</sup> In its  
10 decision, the court concluded that the prohibition against wearing the named  
11 weapons was well justified in that they “are usually employed in private broils, and  
12 which are efficient only in the hands of the robber and the assassin.”<sup>113</sup> The court  
13 continued, “The Legislature, therefore, have a right to prohibit the wearing or  
14 keeping weapons dangerous to the peace and safety of the citizens. . . .”<sup>114</sup> Further,  
15 the court added that the state law existed “to preserve the public peace, and protect  
16 our citizens from the terror which a wanton and unusual exhibition of arms might  
17 produce, or their lives from being endangered by desperadoes with concealed  
18 arms. . . .”<sup>115</sup>

19           39. The ubiquity of the concern about the criminological consequences of  
20 carrying Bowie knives and other, similar long-bladed knives is seen in the  
21 widespread adoption of laws barring or restricting these weapons.<sup>116</sup> In the 1830s,

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22  
23           <sup>112</sup> *Aymette v. State*, 21 Tenn. 152, 153 (Tenn. 1840).

24           <sup>113</sup> *Ibid.*, 156.

25           <sup>114</sup> *Ibid.*, 157.

26           <sup>115</sup> *Ibid.*

27           <sup>116</sup> The near-immediate effort in the states to restrict Bowie knives was noted,  
28 for example, in Davis, *Three Roads to the Alamo*, 582, and in Flayderman, *The Bowie Knife*, 53-54.

four states enacted laws barring the carrying of Bowie knives by name. From then to the start of the twentieth century, every state plus the District of Columbia (with the sole exception of New Hampshire) restricted Bowie knives: a total of at least 38 states (including the District of Columbia) barred or restricted Bowie knives by name; and another 12 states enacted laws barring the category or type of knife embodied by the Bowie knife but without mentioning them by name (see Exhibits C and E) totaling 49 states plus the District of Columbia.<sup>117</sup> Several states banned the possession of Bowie knives outright, and others imposed taxes on the ability for individuals to acquire or possess them. See Exhibit E. The desirability and utility of concealed carry restrictions were precisely that they pushed dangerous weapons out of public spaces and places, improving public safety through the deterrent and punishment effects of such laws, and also discouraging the settlement of private grievances and disputes in public through weapons-fueled violence.

#### **B. Historical Restrictions on Clubs and Other Blunt Weapons**

40. A very similar and analogous set of hardware restrictions was enacted regarding clubs and other blunt weapons. See Exhibits C and E. Nearly all were anti-carry laws, which also generally included pistols and knives. As the table in Exhibit C shows, at least six distinct types of clubs and blunt objects were regulated in the United States. Notably, every single state in the nation (except for New Hampshire) had laws restricting one or more types of clubs.

41. Among the six types, 15 states barred bludgeon carrying. A bludgeon is a short stick with a thickened or weighted end used as a weapon.<sup>118</sup> The earliest state anti-bludgeon law was in 1799; 12 such state laws were enacted in the 1700s and 1800s, and 4 in the early 1900s (as with each of these chronological categories,

<sup>117</sup> Initial bowie law enactment by decade: 1830s: 4 states; 1840s: 1 state; 1850s: 7 states; 1860s: 5 states; 1870s: 14 states; 1880s: 10 states; 1890s: 8 states; 1900s: 1 state. See Exhibits C and E.

<sup>118</sup> <https://www.merriam-webster.com/dictionary/bludgeon>.

1 the state law total exceeds the total number of states because some states enacted  
2 the same or similar laws in multiple centuries).

3 42. A billy (sometimes spelled billie) club is a heavy, hand-held rigid club,  
4 usually made of wood, plastic, or metal,<sup>119</sup> that is traditionally carried by police,  
5 often called a nightstick or baton. Seventeen states had anti-billy club laws; the  
6 earliest law appears to have been enacted in 1866. Fourteen states enacted such  
7 laws in the 1800s; 10 states did so in the early 1900s.

8 43. At least 14 states barred the carrying of “clubs” more generically,  
9 without specifying the type. The oldest anti-club law was 1664; 7 states enacted  
10 these laws in the 1600s-1700s, 7 states in the 1800s, and 2 in the early 1900s.

11 44. Anti-slungshot carry laws were enacted by 43 states. A slungshot (or  
12 slung shot) is a hand-held weapon for striking that has a piece of metal or stone at  
13 one end attached to a flexible strap or handle that was developed roughly in the  
14 1840s (the first “known use” of slungshot was 1842).<sup>120</sup> By one account,  
15 “[s]lungshots were widely used by criminals and street gang members in the 19th  
16 Century. They had the advantage of being easy to make, silent, and very effective,  
17 particularly against an unsuspecting opponent. This gave them a dubious  
18 reputation, similar to that carried by switchblade knives in the 1950s, and they were  
19 outlawed in many jurisdictions. The use as a criminal weapon continued at least up  
20 until the early 1920s.”<sup>121</sup>

21 45. In a criminal case considered the most famous of those involving  
22 lawyer Abraham Lincoln, the future president defended a man charged with  
23

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24 <sup>119</sup> <https://www.merriam-webster.com/dictionary/billy%20club>. One of the  
25 earliest references to a “billy” was a 1857 newspaper article describing “an  
26 indiscriminate attack with slung-shot, billies, clubs, &c.” Local Intelligence,  
Delaware Republican, June 15, 1857, <https://bit.ly/3V9nVO7>.

27 <sup>120</sup> See <https://www.merriam-webster.com/dictionary/slungshot>.

28 <sup>121</sup> “Slungshot,” <https://military-history.fandom.com/wiki/Slungshot>.

1 murdering another using a slung shot. In the 1858 trial of William “Duff”  
 2 Armstrong, Lincoln succeeded in winning Armstrong’s acquittal.<sup>122</sup>

3 46. These weapons were viewed as especially dangerous or harmful when  
 4 they emerged in society, given the ubiquity of state enactments against carrying  
 5 them enacted after their invention. These devices were invented and appeared in  
 6 society during an identifiable period of time in the mid-nineteenth century, sparking  
 7 subsequent wide-ranging prohibitions. The earliest anti-Slungshot law was enacted  
 8 in 1850; 42 states legislated against them in the 1800s (including the District of  
 9 Columbia), and 11 states in the early 1900s (note this incorporates laws enacted in  
 10 more than one century by a few states).

11 47. Sandbags, also known as sand clubs, were also a specific focus in anti-  
 12 carry laws as well. Consisting of nothing more than sand poured into a bag, sack,  
 13 or sock (although it could also be something dense and heavy, like a lock in the end  
 14 of a sock),<sup>123</sup> their particular appeal was that they could be dispensed with by  
 15 simply pouring the sand out, leaving nothing more than an empty cloth bag. The  
 16 first anti-sandbag law was 1866, with 10 states enacted such laws—7 in the 1800s  
 17 and 7 in the early 1900s.

18 48. Only 4 states did not have any prohibitions in any of these categories,  
 19 but 3 of those 4 (Montana, Ohio, and Washington State) had blanket legislative  
 20 provisions against the carrying of any concealed/dangerous/deadly weapons. One  
 21  
 22

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23 <sup>122</sup> Lincoln was able to discredit the testimony of a witness who claimed to  
 24 see Armstrong strike the victim at night because of the full moon. Lincoln used as  
 25 evidence an Almanac to prove that on the night in question, there was no full moon.  
 26 Judson Hale, “When Lincoln Famously Used the Almanac,” *Almanac*, May 4,  
 2022, <https://www.almanac.com/abraham-lincoln-almanac-and-murder-trial>.

27 <sup>123</sup> [https://www.ferrislawnv.com/criminal-defense/weapons-](https://www.ferrislawnv.com/criminal-defense/weapons-offenses/dangerous-weapons/)  
 28 [offenses/dangerous-weapons/](https://www.ferrislawnv.com/criminal-defense/weapons-offenses/dangerous-weapons/).

1 state, New Hampshire, may not have enacted such a law during this time but did at  
2 some point.<sup>124</sup>

### 3 **C. Historical Restrictions on Pistol Carrying**

4 49. Carry restriction laws were widely enacted from the 1600s through the  
5 start of the twentieth century, spanning over three centuries. As early as 1686, New  
6 Jersey enacted a law against wearing weapons because they induced “great fear and  
7 quarrels.”<sup>125</sup> Massachusetts followed in 1750. In the late 1700s, North Carolina  
8 and Virginia passed similar laws. In the 1800s, as interpersonal violence and gun  
9 carrying spread, 43 states joined the list; 3 more did so in the early 1900s (see  
10 Exhibit B). The eighteenth century laws generally restricted more general carrying  
11 of firearms, usually if done in crowded places, or in groups of armed people. The  
12 laws of the nineteenth century forward generally restricted concealed weapons  
13 carrying. Among the earliest laws criminalizing the carrying of concealed weapons  
14 was that of Louisiana in 1813. Concealed carry laws normally targeted pistols as  
15 well as the types of knives and various types of clubs discussed here (see Exhibit E  
16 for text of most such laws).

### 17 **D. Historical Restrictions on Trap Guns**

18 50. Not to be confused with firearms used in trapshooting, trap guns were  
19 devices or contraptions rigged in such a way as to fire when the owner need not be  
20

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21 <sup>124</sup> Up to 2010, New Hampshire had this law on the books: “159:16 Carrying  
22 or Selling Weapons. Whoever, except as provided by the laws of this state, sells,  
23 has in his possession with intent to sell, or carries on his person any stiletto, switch  
24 knife, blackjack, dagger, dirk-knife, slung shot, or metallic knuckles shall be guilty  
25 of a misdemeanor; and such weapon or articles so carried by him shall be  
26 confiscated to the use of the state.” In 2010, the law was amended when it enacted  
27 HB 1665 to exclude stilettos, switch knives, daggers, and dirk-knives. Compare  
28 N.H. Rev. Stat. § 159:16 with 2010 New Hampshire Laws Ch. 67 (H.B. 1665)...

<sup>125</sup> The Grants, Concessions, And Original Constitutions of The Province of  
New Jersey 290 (1881).

1 present. Typically, trap guns could be set to fire remotely (without the user being  
 2 present to operate the firearm) by rigging the firearm to be fired with a string or  
 3 wire when tripped.<sup>126</sup> This early law from New Jersey in 1771 both defines and  
 4 summarizes the problem addressed by this law:

5       Whereas a most dangerous Method of setting Guns has too much  
 6 prevailed in this Province, Be it Enacted by the Authority aforesaid, That  
 7 if any Person or Persons within this Colony shall presume to set any  
 8 loaded Gun in such Manner as that the same shall be intended to go off or  
 9 discharge itself, or be discharged by any String, Rope, or other  
 10 Contrivance, such Person or Persons shall forfeit and pay the Sum of Six  
 Pounds; and on Non-payment thereof shall be committed to the common  
 Gaol of the County for Six Months.<sup>127</sup>

11       51. Also sometimes referred to as “infernial machines,”<sup>128</sup> the term trap gun  
 12 came to encompass other kinds of traps designed to harm or kill those who might  
 13 encounter them, including for purposes of defending property from intruders.  
 14 Unlike the other weapons restrictions examined here, opinion was more divided on  
 15 the relative merits or wisdom of setting such devices, with some arguing that  
 16 thieves or criminals hurt or killed by the devices had it coming,<sup>129</sup> though the

17  
 18       

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 19       <sup>126</sup> See Spitzer, “Gun Law History in the United States and Second  
 Amendment Rights,” 67.

20       <sup>127</sup> 1763-1775 N.J. Laws 346, An Act for the Preservation of Deer and Other  
 21 Game, and to Prevent Trespassing with Guns, ch. 539, § 10.

22       <sup>128</sup> E.g. 1901 Utah Laws 97-98, An Act Defining an Infernal Machine, and  
 23 Prescribing Penalties for the Construction or Contrivance of the Same, or Having  
 24 Such Machine in Possession, or Delivering Such Machine to Any Person . . . , ch.  
 96, §§ 1-3.

25       <sup>129</sup> For example, this small item appeared in the Bangor (Maine) Daily Whig  
 26 on October 27, 1870: “A burglar while attempting to break into a shop in New  
 27 York, Monday night, had the top of his head blown off by a trap-gun so placed that  
 28 it would be discharged by any one tampering with the window. A few such  
 ‘accidents’ are needed to teach the thieves who have lately been operating in this  
 city, a lesson.”

weight of opinion seemed mostly against such devices.<sup>130</sup> Those who set gun traps typically did so to defend their places of business, properties, or possessions. This 1870 newspaper account from an incident in New York City provides an example where a burglar was killed by a gun-trap set by a shopkeeper, who was then prosecuted: “As there is a statute against the use of such infernal machines, which might cause loss of life to some innocent person, the jury censured Agostino.” After the verdict the man continued to be held under \$2,000 bail.<sup>131</sup>

52. Inevitably, however, the traps sometimes wound up hurting or killing innocents, even including the person who set the trap. For example, this 1891 newspaper account from Chillicothe, Missouri illustrated the problem: “George Dowell, a young farmer, was fined \$50 under an old law for setting a trap-gun. Dowell set the gun in his corn-crib to catch a thief, but his wife was the first person to visit the crib and on opening the door was shot dead.”<sup>132</sup>

53. In all, at least 16 states had anti-trap gun laws (see Exhibits B and F). The earliest such law encountered was the 1771 New Jersey law (above). Nine laws were enacted in the 1700s-1800s, and 9 in the early 1900s (counting states that enacted multiple laws across the centuries).

#### IV. CONCLUSION

54. What does the law say, and what should the law be, regarding the regulation of firearms and other harmful or dangerous weapons and accessories, in the light of the Supreme Court’s ruling in the *Bruen* decision? Given the

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<sup>130</sup> This is my observation based on my reading of historic newspaper accounts from the late 1800s, and from the number of anti-trap gun laws enacted. As policing became more consistent, professional, and reliable, support for vigilante-type actions like setting trap guns seems to have declined.

<sup>131</sup> . “The Man Trap,” *The Buffalo Commercial*, November 1, 1870; from the *N.Y. Standard*, October 29, 1870, <https://bit.ly/3yUSGNF>. See Exhibit G.

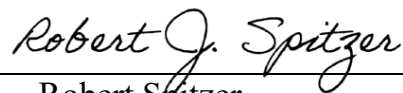
<sup>132</sup> “Shot by a Trap-Gun,” *South Bend Tribune*, February 11, 1891, <https://bit.ly/3CtZsfk>. See Exhibit G.



1 importance of history, especially, though not limited to, the founding era and the  
2 Reconstruction era, the lesson is abundantly clear. Firearms and other dangerous  
3 weapons were subject to remarkably strict, consistent, and wide-ranging regulation  
4 throughout our history when they entered society, proliferated, and resulted in  
5 violence, harm, or contributed to criminality. This historical record from the 1600s  
6 through the early twentieth century, as seen in the examples examined here, is even  
7 more remarkable given that the United States was an evolving and developing  
8 nation-state that could not claim to have reached maturity until the twentieth  
9 century. The historical record summarized here makes clear that contemporary  
10 restrictions among the states pertaining to assault weapons and large capacity  
11 ammunition magazines are merely the latest iteration of a centuries-long tradition of  
12 weapons regulations and restrictions. Gun ownership is as old as the country. But  
13 so are gun and other dangerous weapons laws, which have adapted to changes in  
14 threats to public safety.

15 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the  
16 laws of the United States of America that the foregoing is true and correct.

17 Executed on November 10, 2022, at Cortland, NY.

18  
19  
20   
21 Robert Spitzer

**INDEX OF EXHIBIT**

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## **EXHIBIT A**

September 2022

## **Curriculum Vitae**

**Robert J. Spitzer**

**Distinguished Service Professor, Emeritus  
SUNY Cortland**

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<https://sites.google.com/site/robertspitzercortland/>

Education: A.B. (Political Science), summa cum laude, SUNY College at Fredonia, 1975.  
M.A. Cornell University, 1978.  
Ph.D. Cornell University, 1980.

### Positions Held:

Department Chair, SUNY Cortland, 2008-2020.  
Interim Department Chair, SUNY Cortland, 2004-2005.  
Distinguished Service Professor, SUNY Cortland, 1997.  
Visiting Professor, Cornell University, Spring, 2009, Spring 1993; Summers 1980, 1988-1990, 1992-2017.  
Professor, SUNY Cortland, 1989 to 1997.  
Continuing Appointment, SUNY Cortland, 1986.  
Associate Professor, SUNY Cortland, 1984 to 1989.  
Department Chair, SUNY Cortland, 1983 to 1989.  
Visiting Professor, SUNY College of Technology, Utica-Rome, Graduate Division, 1985, 1986, 1988.  
Copy Editor, Administrative Science Quarterly, 1982 to 1983.  
Adjunct Professor, Tompkins-Cortland Community College, 1982-83.  
Assistant Professor, SUNY Cortland, 1979 to 1984.  
Instructor, Cornell University, 1979.  
Instructor, Eisenhower College, 1978-1979.  
Research Assistant, Theodore J. Lowi and Benjamin Ginsberg, 1976-1978.  
Reporter (Stringer), Buffalo Courier-Express; Dunkirk Evening Observer, 1974-75.

Honors:

Fellow, the Royal Society for Arts, Manufactures and Commerce (RSA), London, England, 2020.

Founding member, Regional Gun Violence Research Consortium, coordinated with the Rockefeller Institute of Government. Consortium of gun policy experts from eight states to advance research on gun policy, 2018-present.

Member, SUNY Research Council, an advisory council to the SUNY Board of Trustees, SUNY System Administration, campus leadership teams, and the leadership team of the Research Foundation (RF) for SUNY, 2018-2021.

Member, Scholars Strategy Network, 2015-present. Created to improve public policy and strengthen democracy by connecting scholars and their research to policymakers, citizens associations, and the media.

Winner, Pi Sigma Alpha (the national political science honors society) Chapter Advisor of the Year Award for 2013.

Winner, Outstanding Achievement in Research Award, SUNY Cortland, 2010.

Winner, Outstanding Achievement in Research Award, SUNY Cortland, 2005.

Winner, State University of New York's Chancellor's Excellence in Scholarship and Creative Activities Award, 2003.

SUNY Cortland Nominee, National Scholar Competition of the Honor Society of Phi Kappa Phi, 1994-95.

Winner, New York State/United University Professions Excellence Award, 1991, for "outstanding professional performance and superior service."

Member, New York State Commission on the Bicentennial of the U.S. Constitution, 1986-1990.

Member, New York State Ratification Celebration Committee for U.S. Constitution Bicentennial, 1987-88.

Member, National Bicentennial Competition on the Constitution and the Bill of Rights, 1987-1991.

Who's Who in the World, 1996.

Dictionary of International Biography, 1995.

Who's Who in the East, 1995-96; 1997-98

Ex officio member, Cortland County Bicentennial Committee, 1987-89.

Chair, SUNY Cortland Bicentennial Committee, 1987-89.

Phi Eta Sigma, SUNY Cortland, 1994.

Phi Kappa Phi, SUNY Cortland, 1990.

Men of Achievement (1986)

Contemporary Authors, vol. 112 (1985) and subsequent updates.

International Authors and Writers Who's Who, 1985-present.

International Who's Who in Education, Winter 1985-86.

Herbert H. Lehman Graduate Fellowship, 1975-79.

Who's Who Among Students in American Universities and Colleges, 1974-75.

Phi Beta Kappa Club, SUNY College at Fredonia, 1975.

Phi Alpha Theta (History), SUNY College at Fredonia, 1974.  
Phi Mu Alpha Sinfonia, (Music), SUNY College at Fredonia, 1973.

Research Fellowships and Projects:

Individual Development Awards, SUNY Cortland, 2001, 2003, 2005, 2006, 2007, 2008, 2009, 2014, 2017, 2020.  
Title "F" Leave with pay, Spring 1994.  
Professional Development and Quality of Working Life Award, 1989, 1993, 1998, 1999.  
National Endowment for the Humanities (NEH) Research Grant for Study of the Constitution, 1986. Project Proposal: "The Presidential Veto: Constitutional Antecedents and Modern Applications."  
SUNY Cortland Faculty Research Program Grant, "The Presidential Veto, 1986.  
Consultant for Reporting Research Corporation, "Quality of Earnings Report," Thornton L. O'Glove, author; research on presidential veto use, 1984-1987.  
SUNY University Awards Program Research Fellowship, "The Right to Life Party and New York State Politics, 1983.  
SUNY Cortland Faculty Research Program Fellowship, "New York State Parties and Politics," 1980.

Publications and Papers:

Books:

The Presidency and Public Policy: The Four Arenas of Presidential Power (University, AL: The University of Alabama Press, 1983). A study of the President's relations with Congress in the making of domestic policy. Revised version of doctoral dissertation.

The Right to Life Movement and Third Party Politics (Westport, CT: Greenwood Press, 1987). A study of the New York multi-party system, single-issue third parties, and the state-based Right to Life Party.

The Presidential Veto: Touchstone of the American Presidency (Albany, NY: SUNY Press, 1988), with a foreword by Louis Fisher. A study of the constitutional antecedents and modern applications of the veto power. Published as part of SUNY Press Series on Leadership, edited by Barbara Kellerman.

Editor, The Bicentennial of the U.S. Constitution: Commemoration and Renewal (Cortland, NY: SUNY Cortland, 1990). A compendium of articles based on presentations given at SUNY Cortland pertaining to the Constitution's Bicentennial. Contributors include Senator Daniel Patrick Moynihan, Theodore J. Lowi, Judith A. Best, and Robert

Spitzer.

President and Congress: Executive Hegemony at the Crossroads of American Government (New York: McGraw-Hill; and Temple University Press, 1993). Published simultaneously by co-publishing agreement in paper by McGraw-Hill, and hardcover by Temple. An analytic survey and critique of presidential-congressional relations. Received Honorable Mention for the Richard Neustadt Award for Best Book on the Presidency for 1993.

Editor, Media and Public Policy (New York: Praeger, 1993). Published in Praeger's Political Communications Series, edited by Robert E. Denton, Jr. A collection of original essays dealing with various aspects of media's impact on public policy. Contributors include Doris Graber, Julio Borquez, Wenmouth Williams, Marion Just, Ann Crigler, Michael Hawthorne, Dean Alger, Jerry Medler, Michael Medler, Montague Kern, Robert Sahr, Holli Semetko, Edie Goldenberg, Patrick O'Heffernan, and Robert Spitzer.

The Politics of Gun Control (New York: Chatham House, 1995; 2<sup>nd</sup> edition, 1998; 3<sup>rd</sup> edition, CQ Press, 2004; 4<sup>th</sup> ed. 2008; 5<sup>th</sup> ed., Paradigm/Routledge Publishers 2012; 6<sup>th</sup> ed., Routledge, 2015, 7<sup>th</sup> ed., 2018; 8<sup>th</sup> ed. 2021). A comprehensive political and policy analysis of the gun issue that applies policy theory to the key elements of the gun debate, including analysis of the Second Amendment, cultural-historical factors, interest group behavior, criminological consequences, legislative and executive politics.

Editor, Politics and Constitutionalism: The Louis Fisher Connection, (Albany, NY: SUNY Press, 2000). A collection of original essays inspired by the works of Louis Fisher. Contributors include Neal Devins, Nancy Kassop, Dean Alfange, David Adler, Loch Johnson, Michael Glennon, Louis Fisher, and Robert Spitzer. Published as part of the SUNY Press Book Series on American Constitutionalism. Nominated by SUNY Press for the 2001 Silver Gavel Award of the American Bar Association.

The Right to Bear Arms: Rights and Liberties Under the Law (Santa Barbara, CA: ABC-CLIO, 2001). An extensive analysis of the Second Amendment "right to bear arms" from legal, historical, and political perspectives. Published as part of the "America's Freedoms" Series edited by Donald Grier Stephenson.

Essentials of American Politics, co-authored with Benjamin Ginsberg, Johns Hopkins; Theodore Lowi, Cornell; Margaret Weir, Berkeley. (W.W. Norton, 2002; 2<sup>nd</sup> edition, 2006). A synthetic, analytic look at American government and politics.

The Presidency and the Constitution: Cases and Controversies, co-authored with Michael A. Genovese (NY: Palgrave/Macmillan, 2005). A combination of analysis and cases examining the courts' view of presidential power.



Saving the Constitution from Lawyers: How Legal Training and Law Reviews Distort Constitutional Meaning (New York: Cambridge University Press, 2008). A sweeping indictment of the legal community when it enters into the realm of constitutional interpretation.

We the People: Essentials Edition, co-authored with Benjamin Ginsberg, Johns Hopkins; Theodore Lowi, Cornell; Margaret Weir, Berkeley. (W.W. Norton, 7<sup>th</sup> ed. 2009; 8<sup>th</sup> ed. 2011; 9<sup>th</sup> ed., 2013; 10<sup>th</sup> ed. 2015; 11<sup>th</sup> ed. 2017; 12<sup>th</sup> ed. 2019; 13<sup>th</sup> ed. 2021).

Gun Control: A Documentary and Reference Guide (Westport, CT: Greenwood Publishing Group, 2009). A combination of analysis, commentary, and original historical and contemporary documents pertaining to the gun issue published in Greenwood's Documentary and Reference Series.

The Gun Debate: An Encyclopedia of Gun Rights and Gun Control, co-authored with Glenn Utter (Grey House Publishers, 2011; third edition 2016). An A-Z compendium of gun issues.

Guns across America: Reconciling Gun Rules and Rights (New York: Oxford University Press, 2015); revised paperback edition published 2017. Argues that our understanding of the gun issue as it has evolved in the U.S. is upside down, looking at gun law history, the Second Amendment, stand your ground laws, and New York State gun laws.

The Gun Dilemma: How History Is Against Expanded Gun Rights (New York: Oxford University Press, 2023, forthcoming). Argues that the courts are ushering in a new era of expanded gun rights, despite the fact that such a movement is contrary to our gun history by examining assault weapons, ammunition magazines, silencers, gun brandishing, and the Second Amendment sanctuary movement.

Book Series Editor, Series on American Constitutionalism, SUNY Press, 1996-present. Books include:

Daniel Hoffman, Our Elusive Constitution, (1997)

Martin Sheffer, God and Caesar: Belief, Worship, and Proselytizing Under the First Amendment, (1999)

Daniel Levin, Representing Popular Sovereignty: The Constitution in American Political Culture, (1999)

Robert Spitzer, ed., Politics and Constitutionalism, (2000)

Laura Langer, Judicial Review in State Supreme Courts (2002)

Ian Brodie, Friends of the Court (2002)

Samuel Leiter and William Leiter, Affirmative Action in Antidiscrimination Law and Policy (2002)

Artemus Ward, Deciding to Leave: The Politics of Retirement from the United States Supreme Court (2003)

James T. McHugh, Ex Uno Plura: State Constitutions and Their Political Cultures (2003).

Stephen Newman, ed., Constitutional Politics in Canada and the United States (2004).

Stephen Kershnar, Justice for the Past (2004).

Timothy R. Johnson, Oral Arguments and Decision Making on the U.S. Supreme Court (2004).

Christopher P. Banks, David B. Cohen, and John C. Green, eds., The Final Arbiter: The Consequences of Bush v. Gore for Law and Politics (2005).

Kenneth D. Ward and Cecilia R. Castillo, eds., The Judiciary and American Democracy: Alexander Bickel, the Countermajoritarian Difficulty, and Contemporary Constitutional Theory (2005).

G. Alan Tarr and Robert F. Williams, eds., State Constitutions for the Twenty-first Century: The Politics of State Constitutional Reform (2006).

Frank P. Grad and Robert F. Williams, State Constitutions for the Twenty-first Century: Drafting State Constitutions, Revisions, and Amendments (2006).

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Cary Federman, The Body and the State: Habeas Corpus and American Jurisprudence (2006).

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Stephen A. Simon, Universal Rights and the Constitution (2014).

Kirk A. Randazzo and Richard W. Waterman, Checking the Courts (2014).

Anthony Maniscalco, Public Spaces, Marketplaces, and the Constitution (2015).

Goirgi Areshidze et al., eds., Constitutionalism, Executive Power, and the Spirit of Moderation (2016).

Peter J. Galie, et al., eds., New York's Broken Constitution (2016).

Robert J. Hume, Ethics and Accountability on the U.S. Supreme Court (2017).

Michael A. Dichio, The U.S. Supreme Court and the Centralization of Federal Authority (2018).

Clyde H. Ray, John Marshall's Constitutionalism (2019).

Daniel P. Franklin, et al., The Politics of Presidential Impeachment (2020).

Robert M. Howard, et al., Power, Constraint, and Policy Change: Courts and Education Finance Reform (2021).

Mark C. Dillon, The First Chief Justice (2022).

Book Series Editor, Presidential Briefing Books, Routledge, 2015-present.

Mary Stuckey, Political Rhetoric (2015)

Michael A. Genovese, Presidential Leadership in an Age of Change (2015)

Christopher Fettweis, Making Foreign Policy Decisions (2016)

Nancy Maveety, Picking Judges (2016)

Richard S. Conley, Presidential Relations with Congress (2017)

Andrew L. Stigler, Governing the Military (2019)

Graham G. Dodds, The Unitary Presidency (2020)

Member, Board of Editors for the Encyclopedia of Guns in American Society, 2 vols. (Santa Barbara, CA: ABC-CLIO, 2003; second ed. 2011). Winner of the Booklist Editors' Choice Award for 2003, American Library Association.

Member, Board of Editors, Issues: Understanding Controversy and Society, ABC-CLIO, 2011-2016.

#### Book Chapters:

"Third Parties in New York," in Governing New York State (formerly New York State Today), ed. by Robert Pecorella and Jeffrey Stonecash (Albany, N.Y.: SUNY Press, 1984, 1989, 1994, 2001, 2006). Chapter revised for second, third, fourth, and fifth editions.

"Gun Control: Constitutional Mandate or Myth," in Social Regulatory Policy: Recent Moral Controversies in American Politics, ed. by Raymond Tatalovich and Byron Daynes (Boulder, CO: Westview Press, 1988), 111-141.

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"President and Congress," in The CQ Guide to the Presidency, ed. by Michael Nelson (Washington, D.C.: Congressional Quarterly, Inc., 1989; revised for 2<sup>nd</sup> ed., 1996 and 3<sup>rd</sup> ed. 2002; 4<sup>th</sup> ed. 2007; 5<sup>th</sup> ed. 2012).

Nineteen entries in Encyclopedia of American Political Parties and Elections, ed. by L. Sandy Maisel (New York: Garland Pub., 1991): American Labor Party, Benjamin Bubar,

closed primary, Conservative Party, cross-endorsement rule, Free Soil Party, Greenback Party, Liberal Party, Liberty Party, John V. Lindsay, Allard K. Lowenstein, open primary, Right to Life Committee, Right to Life Party, Prohibition Party, Alex Rose, split ticket voting, telethons, Mary Jane Tobin.

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“Why There Will Be No Trump Impeachment Now—Even Though There Should Be,” *Huffington Post*, January 18, 2017.

“The NRA Wants to Suppress One of Guns’ Most Important Safety Features,” *Washington Post*, January 23, 2017; *Chicago Tribune*, January 24, 2017.

“Trump’s Tax Returns and Tax Reform: Can We Get Both?” *Syracuse Post Standard*, April 16, 2017.

“Armed Private Militias like Charlottesville’s Offend the Founding Fathers’ Intent,” *NY Daily News*, August 16, 2017.

“Private Militias and Gun Rights,” *Syracuse Post Standard*, August 20, 2017.

“Americans Used to Be Good at Gun Control. What Happened?” *New York Times*, October 3, 2017.

“An American Standoff,” *New York Daily News*, October 8, 2017.

“Laws We Used to Have on the Books Could Have Prevented the Florida School Shooting,” *Washington Post*, February 15, 2018.

“The NRA’s Journey from Marksmanship to Political Brinkmanship,” *The Conversation*, February 23, 2018.

“How to Keep the Deadliest Guns Out of Dangerous Hands,” *New York Daily News*, March 5, 2018.

“You Can Report a Bad Driver; Why Not an Angry Gun Owner?” *Syracuse Post Standard*, March 11, 2018.

“Here’s What Trump Doesn’t Know about Knives, Guns and Murder,” *Washington Post*, May 9, 2018.

“‘Stand Your Ground’ Laws Have Failed to Stem Crime or Improve Safety,” Rockefeller Institute of Government, June 4, 2018.

“What’s Behind NRA TV’s Grotesque Take on ‘Thomas & Friends,’” *CNN.com*, September 13, 2018.

“The Gun Safety Issue is Actually Helping Democrats,” *New York Times*, November 12, 2018.

“Impeachment: Be Careful What You Ask For,” *Syracuse Post Standard*, December 30, 2018.

“Why the Supreme Court Will Almost Surely Strike Down New York City’s Gun Law,” *New York Daily News*, January 24, 2019.

“Why ‘Vice’ Deserves an Oscar,” *Los Angeles Times*, February 7, 2019.

“One Year Later: Parkland Shifted the Politics of Guns,” *Syracuse Post Standard*, February 17, 2019.

“There’s No Second Amendment Right to Large-Capacity Magazines,” *New York Times*,

August 6, 2019.

“Can the NRA Survive its Current Crisis?” *History News Network*, hnn.us, August 11, 2019.

“Trump Should Seize This Pivotal Moment and Stop Waffling on Gun Control,” *CNN.com*, August 24, 2019.

“One Gun Policy Idea We Can Agree On: Magazine Regulation,” *Second Thoughts*, The Center for Firearms Law at Duke University, October 10, 2019.

“William Barr’s Upside-Down Constitution,” *History News Network*, December 1, 2019.

“Gun Rights Sanctuaries Threaten Law and Order,” *Syracuse Post Standard*, February 2, 2020.

“Why Are People Bringing Guns to Anti-quarantine Protests? To Be Intimidating,” *Washington Post*, April 27, 2020.

“The NRA is Doomed. It Has Only Itself to Blame.” *Washington Post*, August 8, 2020.

“Guns Don’t Belong Near Polling Places. Right Wingers Want Them There Anyway.” *Washington Post*, September 30, 2020.

“President Trump’s Record on Promises: Did He Keep Them?” *Syracuse Post Standard*, October 1, 2020.

“Originalism, Shot Full of Holes: A Primer for Amy Coney Barrett,” *New York Daily News*, October 14, 2020.

“Guns and the 2020 Elections,” *US Election Analysis 2020*, Daniel Jackson, et al., eds. Centre for Politics & Media Research and the Centre for the Study of Journalism, Culture and Community at Bournemouth University, UK, November 15, 2020.

“Capitol Riot a Fitting End to Trump Presidency Built on Lies,” *Syracuse Post-Standard*, January 8, 2021.

“The Problem with a Self-Pardon,” *History News Network*, January 14, 2021.

“The Supreme Court’s intent isn’t concealed: Conservatives are hell bent on expanding gun rights,” *NY Daily News*, April 26, 2021.



“Expert Opinion: The Coming Collision of Gun Laws and Rights,” Regional Gun Violence Research Consortium, Rockefeller Institute of Government, May 10, 2021.

“The NRA could be winning its long game even as it appears to be in dire straits,” *The Conversation*, November 24, 2021.

“Texas and New York: A Tale of Two State Gun Laws,” *New York Daily News*, January 25, 2022.

“Despite Tragedy, College Campuses Remain Safe,” *Virginia Daily Press/Virginian-Pilot*, February 8, 2022.

“Sandy Hook-Remington gun marketing settlement shows how to fight gun companies,” *NBC THINK*, February 19, 2022.

“The Sandy Hook-Remington Settlement: Consequences for Gun Policy,” Regional Gun Violence Research Consortium, Rockefeller Institute of Government, March 21, 2022.

“Study of US Government Requires Examination of Conflict,” *Virginia Daily Press/Virginian-Pilot*, May 1, 2022.

“How the NRA evolved from backing a 1934 ban on machine guns to blocking nearly all firearm restrictions today,” *The Conversation*, May 25, 2022. 150

“The NRA wasn’t always opposed to gun restrictions,” *Chicago Sun-Times*, May 27, 2022.

“Originalism, History, and Religiosity are the Faults of Alito's Reasoning in *Dobbs*,” *History News Network*, May 29, 2022.

“US tragedies from guns have often – but not always – spurred political responses,” *The Conversation*, June 8, 2022.

“How the Supreme Court rewrote history to justify its flawed gun decision,” *NBC THINK*, June 23, 2022.

“The Road Ahead for Gun Laws in New York State,” *New York Daily News*, June 28, 2022.

“Understanding the New Gun Policy Collision,” Regional Gun Violence Research Consortium, Rockefeller Institute of Government, July 12, 2022.

Testimony, Briefs, and Reports:

"Report of a Survey of Contributors to the Democratic Telethon," A Report to the Democratic National Committee, Washington, D.C., January 1974.

"Election Laws, Registration and Voting: Some Recommendations," Testimony presented before the New York State Assembly Committee on Election Law, Albany, N.Y., May 15, 1980.

"New York's Multi-Party System," a presentation given before members of the Mexican and Canadian Parliaments at the Rockefeller Institute for Governmental Studies, Albany, N.Y., October 29, 1982.

"Comments and Recommendations on 'The New York State Assembly: The Need for Improved Legislative Management,'" co-authored with Henry Steck, prepared for the New York State Assembly Republican Study Group, September, 1985.

"Registration, Voting, and the New York Election Law," Testimony presented before the Governor's Task Force to Encourage Electoral Participation, World Trade Center, New York City, December 21, 1987.

"The Pocket Veto and Sine Die Adjournments," Testimony presented to the Rules Committee, Subcommittee on the Legislative Process, House of Representatives, Washington D.C., July 26, 1989.

"Issues Pertaining to the Pocket Veto," Testimony presented to the Judiciary Committee, Subcommittee on Economic and Commercial Law, House of Representatives, Washington, D.C., May 9, 1990.

"The Stealth Veto: Does the President Already Possess Item Veto Powers?" Testimony presented to the Judiciary Committee, Subcommittee on the Constitution, U.S. Senate, Washington, D.C., June 15, 1994.

"The Hidden History of the Second Amendment," The National Press Club, Washington, D.C., May 12, 1998.

"The Second Amendment: A Source of Individual Rights?" Testimony presented to the Judiciary Committee, Subcommittee on the Constitution, Federalism, and Property Rights, U.S. Senate, Washington, D.C., September 23, 1998.

"The Gun Industry: The NRA's Silent Partner," National Press Briefing, Atlanta, GA, February 2, 1999.

"Program Review: SUNY Oswego Political Science Department," prepared as part of the

department's review and assessment process, March 2001.

Meeting on Executive Order 13233, pertaining to presidential records access, hosted by Alberto Gonzales, Office of Legal Counsel, the White House, Washington, D.C., December 7, 2001.

Article ("Lost and Found: Researching the Second Amendment," Chicago-Kent Law Review, 2000) cited as controlling authority by the U.S. Court of Appeals, Ninth Circuit, in the case of *Silveira v. Lockyer* (312 F.3d 1052; 9<sup>th</sup> Cir. 2002); 2002 U.S. App. LEXIS 24612.

Coauthor, *amicus curiae* brief in the case of *Nordyke v. King*, U.S. Court of Appeals, Ninth Circuit, 319 F.3d 1185 (2003).

White House meeting on changing standards regarding FOIA requests, access to Executive Branch documents, and presidential library design, hosted by White House Counsel Alberto Gonzales and White House Staff Secretary Brett Kavanaugh, Washington, D.C., July 17, 2003.

Invited participant and panelist, "National Research Collaborative Meeting on Firearms Violence," hosted by the Firearm and Injury Center at the University of Pennsylvania, and the Joyce Foundation, Philadelphia, PA, June 15-17, 2005.

Program Review Report, SUNY Geneseo Political Science Department, March, 2009.

Coauthor with Louis Fisher, *amicus curiae* brief in the case of *Republic of Iraq et al. v. Beatty et. al.*, U.S. Supreme Court, filed March 25, 2009; case decided June 8, 2009 (556 U.S. 848; 2009).

Testimony on bills to enact early voting and other state voting reform measures before the New York State Senate Standing Committee on Elections, Syracuse, NY, May 14, 2009.

Co-author, *amicus* brief in the cases of *NRA v. City of Chicago* and *McDonald v. Chicago*, U.S. Supreme Court, argued March 2, 2010, decided June 28, 2010, 561 U.S. 742 (2010).

Consultant for plaintiffs in *Conservative Party of New York and Working Families Party v. NYS Board of Elections* (10 Civ. 6923 (JSR)), 2010, U.S. District Court for the Southern District of New York.

Co-author, *amicus* brief in the case of *Ezell v. Chicago*, U.S. Court of Appeals for the Seventh Circuit, 651 F.3d 684 (2011).

Co-author, *amicus* brief in the case of *People of the State of Illinois v. Aguilar*, Illinois Supreme Court, No. 08 CR 12069, 2012.

Invited panelist and contributor to conference and report, Institute of Medicine and the National Research Council of the National Academies, “Committee on Priorities for a Public Health Research Agenda to Reduce the threat of Firearm-Related Violence,” National Academies Keck Center, 500 Fifth St., NW, Washington, DC, April 23, 2013.

“Perspectives on the ‘Stand Your Ground’ Movement,” Testimony submitted to the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, Hearing on “‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force,” Washington, D.C., October 29, 2013.

Testimony on the Hearing Protection Act to deregulate gun silencers submitted to the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Federal Lands, for Hearings on the Sportsmen’s Heritage and Recreational Enhancement Act (SHARE Act), Washington, D.C., September 12, 2017.

Expert testimony submitted for the State of Massachusetts, Office of Attorney General, in the case of *Worman v. Baker*, No. 1:17-cv-10107-WGY, United States District Court for the District of Massachusetts, submitted September 15, 2017, challenging Massachusetts state assault weapons restrictions. In 2019 the U.S. Court of Appeals for the First Circuit upheld the Massachusetts law (922 F.3d 26).

Member, Regional Gun Violence Research Consortium Organizing Committee, a Task Force organized by NY Governor Andrew Cuomo and the State Department of Education to research and investigate the causes of gun violence in a multi-state effort. February 2018.

Program Review Report, SUNY New Paltz Political Science and International Relations Departments, April 2019.

Consultant on Facebook policies and actions regarding gun issues, Quonundrums Market Research for Facebook, August 17, 2021.

Several of my publications cited in the case ruling of *Duncan v. Bonta*, U.S. Court of Appeals for the Ninth Circuit, November 30, 2021.

Papers and Presentations (not including those given on the Cortland campus):

"The President as Policy-Maker: The Arenas of Presidential Power from 1954 to 1974," American Political Science Association, Washington, D.C., August 28-31, 1980.

"The Right-to-Life Movement as a Third Party: The Policy Environment and Movement Politics," American Political Science Association, New York City, September 3-6, 1981. Reprinted by Rockefeller Institute for Governmental Studies Working Papers, Vol. I, No. 4, September, 1982.

"Viable Democracy or the French Fourth Republic: Multi-Party Politics in New York," New York State Political Science Association, Albany, April 6, 1984.

"The Right-to-Life Movement as Partisan Activity," American Political Science Association, Washington, D.C., August 30 - September 2, 1984.

"Biting the Bullet: Gun Control and Social Regulation," American Political Science Association, New Orleans, La., August 29 - September 1, 1985.

"The Presidential Veto," Northeastern Political Science Association, Boston, MA, November 13-15, 1986.

"Perspectives on the Presidential Veto Power: Antecedents and Evolution," Bicentennial Conference on the Presidency, co-sponsored by the Center for the Study of the Presidency, the Chautauqua Institution and Gannon University, Erie, PA, April 24-26, 1987.

"The Transformation of a Kingly Power: The Presidential Veto, Past and Present," American Political Science Association, Chicago, IL, September 3-6, 1987.

"The Pocket Veto: Expanding Presidential Prerogatives Through the Back Door," American Political Science Association, Washington, D.C., September 1-4, 1988.

"Liberalism and Juridical Democracy; or What's Interesting About Interest Group Liberalism," Western Political Science Association, Newport Beach, CA., March 22-24, 1990.

"Separation of Powers and the War Power," presentation sponsored by the Federalist Society, Cornell University School of Law, April 20, 1990.

"Is the Separation of Powers Obsolete? An Inquiry into Critiques of the Congressional-Presidential Balance of Power," American Political Science Association, Washington, D.C., August 29-September 1, 1991.

"Hate Speech and the College Campus," conference on Two Hundred Years of Free

Expression, SUNY Oneonta, October 2-3, 1992.

"From Presidential Shield to 'Go Ahead, Make My Day': The Presidential Veto and the Constitutional Balance of Power," featured paper presenter for Fall 1992 Symposium on American Constitutionalism, Southwest Texas State University, San Marcos, TX, October 30, 1992.

"The Reagan Presidency and the Veto Power: Symbols and Actions of the 'Make-My-Day' President," Southern Political Science Association, Savannah, GA, November 3-6, 1993.

"Tenure, Speech, and the Jeffries Case: A Functional Analysis," conference on academic Freedom and Tenure, sponsored by New York City Bar Association and Pace University Law School, New York City, March 8, 1994.

"'It's My Constitution, and I'll Cry If I Want To': Constitutional Dialogue, Interpretation, and Whim in the Inherent Item Veto Dispute," American Political Science Association, Chicago, August 31-September 3, 1995. Winner, 1996 Presidency Research Group Founders' Award for Best Paper on the Presidency presented at the 1995 APSA. Paper received mention in the Washington Post, September 24, 1995.

"Guns and Violence," presentation before Bryn Mawr Presbyterian Church Task Force on Violence, Bryn Mawr, PA, October 8, 1995.

"Guns, Militias, and the Constitution," Distinguished Lecture Series, Utica College, Utica NY, March 26, 1996.

"The Right to Bear Arms: A Constitutional and Criminological Analysis of Gun Control," the Cornell University School of Law, October 8, 1996.

"The Veto King: The 'Dr. No' Presidency of George Bush," Conference on the Presidency of George Bush, Hofstra University, Hempstead, NY, April 17-19, 1997.

"Saving the Constitution from Lawyers," American Political Science Association, Washington, D.C., August 28-31, 1997.

"Revolution, the Second Amendment, and Charlton Heston," Gettysburg College, Gettysburg, PA, October 30, 1997.

"Recent Developments in The Politics of Gun Control," Gettysburg College, Gettysburg, PA, November 10, 1998.

"The Second Amendment, Disarmament, and Arms Control," Communitarian Summit,

the Washington National Airport Hilton, Arlington, VA, February 27-28, 1999.

“The Argument Against Clinton’s Impeachment,” Hyde Park Session, American Political Science Association, Atlanta, September 2-5, 1999.

“Gun Politics After Littleton,” Gettysburg College, Gettysburg, PA, November 9, 1999.

“Lost and Found: Researching the Second Amendment,” Symposium on “The Second Amendment: Fresh Looks,” Chicago-Kent Law School and the Joyce Foundation, Chicago, April 28, 2000.

“The Independent Counsel and the Presidency After Clinton,” American Political Science Association, Washington, D.C., August 31-September 3, 2000.

“From Columbine to Santee: Gun Control in the 21<sup>st</sup> Century,” Idaho State University, Pocatello, Idaho, April 19, 2001.

“Gun Control in the New Millennium,” Gettysburg College, Gettysburg, PA, November 13, 2001.

“Gun Rights for Terrorists? Gun Control and the Bush Presidency,” A Presidency Transformed By Crises: The George W. Bush Presidency, SUNY Fredonia, NY, October 17-18, 2002.

“Gun Control and the Bush Presidency,” Gettysburg College, Gettysburg, PA, November 21, 2002.

“The Ashcroft Justice Department and the Second Amendment,” American Bar Association Annual Meeting, San Francisco, August 8-11, 2003.

“The Bush Presidency and 9/11,” Keynote Address, Conference on 9/11, Cazenovia College, NY, September 11, 2003.

“Report of the National Task Force on Presidential Communication to Congress,” co-author, Tenth Annual Texas A&M Conference on Presidential Rhetoric, George Bush Presidential Library and Conference Center, College Station, TX, March 4-7, 2004.

“Don’t Know Much About History, Politics, or Law: Comment,” Conference on The Second Amendment and the Future of Gun Regulation, co-sponsored by the Fordham School of Law, the Second Amendment Research Center, and the John Glenn Institute for Public Service and Public Policy of the Ohio State University, April 13, 2004, New York City.



“Bush vs. Kerry: Election of the Century?” Colgate University, Hamilton, NY, October 20, 2004.

“The Commander-in-Chief Power and Constitutional Invention in the Bush Administration,” a paper presented at a Conference on “Is the Presidency Dangerous to Democracy?”, Loyola Marymount University, Los Angeles, CA, February 7, 2005.

Participant, “The Wheler Family Address on International Relations,” Academic Conference on World Affairs, Cazenovia College, Cazenovia, NY, September 9, 2005.

“What Ever Happened to Gun Control?”, Gettysburg College, Gettysburg, PA, November 1, 2005.

“Clinton and Gun Control: Boon or Bane?” a paper presented at the 11<sup>th</sup> Presidential Conference on William Jefferson Clinton, Hofstra University, Hempstead, NY, November 10-12, 2005.

“George W. Bush and the Unitary Executive,” Keynote Address for “Quest,” SUNY Oswego Scholars Day, April 19, 2006.

“Resolving Conflict with Intractable Foes: The Lessons of International Relations Theory Applied to the Modern Gun Control Debate,” Bryant University, Smithfield, RI, April 24, 2006.

“The Unitary Executive and the Commander-in-Chief Power,” Conference on Presidential Power in America: The Constitution, the Defense of a Nation and the National Ethos, Massachusetts School of Law Conference Series, Andover, MA, October 14-15, 2006.

“The 2006 Elections,” LeMoyne College, Syracuse, NY, November 29, 2006.

“In Wartime, Who Has the Power?” Symposium on Presidential Power and the Challenge to Democracy, Idaho State University, Pocatello, ID, April 26, 2007.

“Saul Cornell’s Second Amendment: Why History Matters,” Conference on Firearms, the Militia and Safe Cities: Merging History, Constitutional Law, and Public Policy, Albany Law School, Albany, NY, October 18-19, 2007.

“Gun Control and the 2008 Elections,” Third Annual Harry F. Guggenheim Symposium on Crime in America, John Jay College, New York City, December 3-4, 2007.

“The Post-Cold War Vice Presidency,” Cornell Adult University, Cornell University, Ithaca, NY, July 31, 2008.

“Is the Presidency Constitutional?” Roundtable panel on Restoring the Constitutional Presidency, APSA, Boston, August 28-31, 2008.

“The Future of the American Presidency,” Board of the Bristol Statehouse, Bristol, RI, November 30, 2008.

“Is the Constitutional Presidency Obsolete? The Future of the American Presidency,” Symposium on The Future of the American Presidency, Regent University, Virginia Beach, VA, February 6, 2009.

“The Failure of the Pro-Gun Control Movement,” SUNY Oneonta, March 19, 2009.

“The Post-Bush Presidency and the Constitutional Order,” American Political Science Association, Toronto, Canada, September 3-6, 2009.

“Inventing Gun Rights: The Supreme Court, the Second Amendment, and Incorporation,” SUNY Geneseo, March 24, 2010.

“Intelligence Don’t Matter,” Keynote Address to Phi Kappa Phi Induction Ceremony, SUNY Cortland, April 17, 2010.

“The Law and Politics of Gun Control after Tucson,” 6<sup>th</sup> Annual Harry Frank Guggenheim Symposium on Crime in America, conference on “Law and Disorder: Facing the Legal and Economic Challenges to American Criminal Justice,” John Jay College of Criminal Justice, CUNY, New York City, January 31-February 1, 2011.

“Looking Ahead to the 2012 Elections,” Tompkins County Democratic Committee, Ithaca, NY, August 7, 2011.

“Growing Executive Power: The Strange Case of the ‘Protective Return’ Pocket Veto,” American Political Science Association, Seattle, WA, September 1-4, 2011.

“Gun Control and the Second Amendment,” OASIS Conference, Syracuse, NY, October 3, 2011

“Comparing the Constitutional Presidencies of George W. Bush and Barack Obama: War Powers, Signing Statements, Vetoes,” conference on “Change in the White House? Comparing the Presidencies of George W. Bush and Barack Obama,” Hofstra University, Hempstead, NY, April 19, 2012.

“Watergate After 40 Years: Dick Cheney’s Revenge,” American Political Science Association, New Orleans, LA, August 30-September 2, 2012.

“The Media, American Elections, and Democracy,” OASIS, Syracuse, NY, October 22, 2012.

“Hot Button Issues in the 2012 Presidential Campaign,” Hiram College Conference on the 2012 Elections, Hiram, Ohio, November 15-17, 2012.

“Gun Legislation and Obstacles to Effective Gun Control,” Metropolitan Black Bar Association, New York City Bar Association, November 29, 2012.

“Guns and America,” Syracuse University, Syracuse, NY, February 19, 2013.

“The Constitution Between Opponents,” conference on “The State of the Presidency,” Andrus Center for Public Policy, Boise State University, Boise, ID, February 28, 2013.

“Gun Policy at a Crossroads,” Thursday Morning Roundtable, Syracuse, NY, March 7, 2013.

“Gun Policy Cycles and History,” Pediatric Grand Rounds at the Upstate Golisano Children’s Hospital, Syracuse, NY, March 13, 2013.

“Gun Law and the Constitution,” Monroe County Bar Association, Rochester, NY, March 21, 2013.

“The Architecture of the Gun Control Debate,” Goldfarb Center for Public Affairs, Colby College, Waterville, ME, April 2, 2013.

“The Campbell Debates: This Assembly Supports the NY SAFE Act,” Syracuse University, April 5, 2013.

“What has Sandy Hook Changed? The Evolving Gun Debate,” Reisman Lecture Series, Cazenovia College, Cazenovia, NY, April 17, 2013.

“Gun Policy Change: Infringing Rights, or Following History?” Jefferson Community College, Watertown, NY, April 18, 2013.

“Under the Gun,” Conference on “Gun Violence, Gun Laws, and the Media,” Center on Media, Crime and Justice, John Jay College of Criminal Justice, New York, May 14-15, 2013.

“Five Myths of the Gun Debate,” Lawman of the Year, Cortland County Lawman Committee, Cortland, NY, May 20, 2013.

“Gun Law History,” Sterling Historical Society, Sterling, NY, June 27, 2013.

“Analyzing the New York SAFE Act,” League of Women Voters Forum, Cortland, NY, September 12, 2013.

“Constitution Day, the Second Amendment, and Guns,” OASIS, Syracuse, NY, September 16, 2013.

“The Second Amendment and Guns in America,” Values, Arts, and Ideas Series Constitution Day Speaker, Manchester University, North Manchester, Indiana, September 17, 2013.

“Live By History, Die By History: The Second Amendment, Heller, and Gun Policy,” Georgetown University, Washington, DC, October 18, 2013.

“American Gun Policy,” “Gun Violence: A Comparative Perspective,” and “American History and Foreign Policy, 1960-1990,” King’s College, London, England; Southbank Centre, “Superpower Weekend,” November 8-11, 2013.

“Gun Politics and the Electoral Process,” Oneida County Women’s Democratic Club and County Committee, Utica, NY, November 17, 2013.

“The Second Amendment and the Hidden History of Gun Laws,” Institute for Legislative Studies, University of North Carolina, Greensboro, NC, November 20-21, 2013.

“The Future of Gun Regulation After Newtown,” Fordham University, New York, NY, January 21, 2014.

“The 2014 Elections: The End of the Obama Era?” 22<sup>nd</sup> Annual Chautauqua, Homer, NY, August 3, 2014.

“New York State and the NY SAFE Act: A Case Study in Strict Gun Laws,” conference on “A Loaded Debate: The Right to Keep and Bear Arms in the 21<sup>st</sup> Century,” Albany Law School, Albany, NY, October 9, 2014.

“Is Gun Control Un-American or at Least Unconstitutional?” Temple Concord, Syracuse, NY, October 14, 2014.

“The American Gun Debate is Under Water,” TEDxCortland Talk, Hathaway House, Solon, NY, October 25, 2014.

“The Unitary Executive and the Bush Presidency,” Conference on the Presidency of George W. Bush,” Hofstra University, Hempstead, NY, March 24-26, 2015.

“Assessing the Obama Presidency,” Western Political Science Association, Las Vegas, NV, April 1-3, 2015.

“Gun Laws, Gun Policies, and the Second Amendment,” Central New York Council of the Social Studies Professional Development Day Conference, Carnegie Conference Center, Syracuse, NY, October 20, 2015.

“The 2016 Elections,” The Cornell Club of Cortland County, November 17, 2015, Cortland, NY.

“Gun Law History in the U.S. and Second Amendment Rights,” Conference on The Second Amendment: Legal and Policy Issues, New York University Law School and the Brennan Center for Justice, New York City, April 8, 2016.

“The Presidential Elections,” The Century Club, June 7, 2016, Syracuse, NY.

“The 2016 Elections,” Chautauqua, August 3, 2016, Homer, NY.

“The 2016 Elections” Cortland Rotary, Cortland, N.Y. September 20, 2016.

“The 2016 Elections,” Cortland Community Roundtable, October 6, 2016.

“TrumPocalypse 2016,” Finger Lakes Forum, Geneva, N.Y., October 16, 2016.

“The 2016 Elections,” Homer Congregational Church, Homer, N.Y., October 30, 2016.

“Had Enough? Only Five More Days,” OASIS, November 3, 2016, Syracuse, N.Y.

“Guns for Everyone?” OASIS, November 14, 2016, Syracuse, N.Y.

“Sizing Up the Trump Presidency,” Cortland County Democratic Party, June 1, 2017.

“Understanding Impeachment,” Ladies Literary Society, Lafayette, NY, June 7, 2017.

“Guns Across America,” Ithaca College, Ithaca, NY, September 21, 2017.

Guest panelist, “Gun Studies Symposium,” University of Arizona, Tucson, AZ, October 20, 2017.

“Gun Policy and Schools After Parkland,” SUNY Student Assembly Annual Conference, Syracuse, NY, April 7, 2018.

“Gun Laws, History, and the Second Amendment: What Does the Constitution Allow?”  
Clemson University, SC, April 17, 2018.

“Gun Violence and the History of Gun Laws,” League of Women Voters of Tompkins  
County, Ithaca, NY, May 23, 2018.

“The Unknown History of Gun Laws in America,” Madison-Chenango Call to Action,  
Hamilton, NY, June 20, 2018.

“It’s All Academic: The Meaning of the Second Amendment Versus Heller,” Conference  
on “The Second Amendment: Its Meaning and Implications in Modern America,”  
Lincoln Memorial University School of Law, Knoxville, TN, January 18, 2019.

“Mulling Over the Mueller Report,” Indivisible Cortland County, Homer, NY, June 15,  
2019.

“Gun Accessories and the Second Amendment: Assault Weapons, Magazines, and  
Silencers,” Symposium on Gun Rights and Regulation Outside the Home, Duke  
University, Durham, NC, September 27, 2019.

“Gun Policy 101: What Policymakers and the Public Need to Know,” Rockefeller  
Institute of Government, Albany, NY, October 1, 2019.

Guest expert, Federalist Society Teleforum on *New York State Rifle and Pistol  
Association v. NYC*, November 22, 2019.

“To Brandish or Not to Brandish: The Consequences of Gun Display,” Duke University  
Law School Conference on Historical Gun Laws, June 19, 2020 (virtual).

“The 2020 Elections,” Cortland Country Club, October 14, 2020.

Panelist, “Gun Law, Politics, and Policy,” Midwest Political Science Association,  
Chicago, April 14-17, 2021 (virtual).

“Gun Violence,” Beaches Watch, Florida, August 4, 2021 (virtual).

“Challenging Conversations: Gun Control,” Lockdown University (virtual), April 5,  
2022.

“Scholars’ Circle: Gun Control,” June 30, 2022 (virtual).

“Gun Rules and Regulations,” Clubhouse AverPoint, July 2, 2022 (virtual).

“A Nation in Crisis: Are Guns the Problem?” Center for Ethics and Human Values’ Civil Discourse Forum, The Ohio State University, Columbus, OH, September 23, 2022.

“Explaining the 2022 Midterm Elections,” OSHER Lifelong Learning Institute at the College of William and Mary, Williamsburg, Va., October 13, 2022.

Panel Participation:

Discussant, "Historical Transformations of Political Institutions in the U.S.," Social Science History Association, Rochester, N.Y., November 7-9, 1980.

Chair, "The Political Economy of Single Issue Movements," 1981 American Political Science Association, New York City, September 3-6.

Discussant, "New York Republicans: An Emerging Majority Party?", New York State Political Science Association, Albany, N.Y., April 2-3, 1982.

Round table panel member, "Perspectives on the Reagan Administration," New York State Political Science Association, New York, N.Y., April 8-9, 1983.

Discussant, "Toward a Theory of the Chief Executive," 1983 American Political Science Association, Chicago, Ill., September 1-4, 1983.

Chair and Discussant, "Political Parties and Party Organization," 1984 American Political Science Association, Washington, D.C., August 30 - September 2, 1984.

Discussant, "Reforming the Presidential Selection Process," New York State Political Science Association, New York, N.Y., April 25-26, 1985.

Chair, "Theoretical Approaches to Policy Concerns," American Political Science Association, New Orleans, La., August 29 - September 1, 1985.

Discussant, "Perspectives on Presidential Influence," American Political Science Association, New Orleans, La., August 29 - September 1, 1985.

Discussant, "The Item Veto," American Political Science Association, New Orleans, La., August 29 - September 1, 1985.

Chair, "Mobilizing Interests on National Policies," American Political Science Association, Washington, D.C., August 28-31, 1986.

Discussant, "The News Media and American Politics," American Political Science



Association, Washington, D.C., August 28-31, 1986.

Chair, "Perspectives on the Bicentennial of the U.S. Constitution," New York State Political Science Association, New York City, April 3-4, 1987.

Discussant, "The Presidency in Comparative Perspective," and "Media and Models of Public Policy-Making," American Political Science Association, Atlanta, Aug. 31 - Sept. 3, 1989.

Discussant, "Presidents and Economic Interests," American Political Science Association, Washington, D.C., August 29 - September 1, 1991.

Panel Chair, "The Presidential Role in Policy Making," American Political Science Association, Chicago, September 3-6, 1992.

Discussant, "Presidential Influence on Congress," American Political Science Association, Washington, D.C., September 2-5, 1993.

Discussant, "Bureaucratic Politics," Southern Political Science Association, November 3-6, 1993.

Discussant, "The President's Extra-Constitutional Power," American Political Science Association, New York City, September 1-4, 1994.

Discussant, "Roundtable on the President and Congress in a Republican Age," Western Political Science Association, San Francisco, March 14-16, 1996.

Chair, "Militias, the Second Amendment, and the State: Constitutional, Social, and Historical Implications," American Political Science Association, San Francisco, August 29-September 1, 1996.

Chair, "Roundtable on Teaching the Presidency," American Political Science Association, August 29-September 1, 1996.

Chair, "The Constitutionalism and Presidentialism of Louis Fisher," American Political Science Association, Washington, D.C., August 28-31, 1997.

Chair, "The President as Legislative Leader," American Political Science Association, Boston, September 3-6, 1998.

Chair, Roundtable on "Memo to the President," American Political Science Association, Atlanta, September 2-5, 1999.

Discussant, "Firearms in the U.S.," Midwest Political Science Association, Chicago, April 27-30, 2000.

Chair and discussant, Roundtable on "Is the Presidency Changed?" APSA, San Francisco, August 30-September 2, 2001.

Chair and discussant, "Presidential Use of Strategic Tools," APSA, Boston, August 29 - Sept. 1, 2002.

Discussant, "Executing the Constitution," APSA, Boston, August 29 - Sept. 1, 2002.

Chair, "Marketing the President," APSA, Philadelphia, August 28-31, 2003.

Discussant, "Media Coverage of the Presidency," APSA, Philadelphia, August 28-31, 2003.

Chair and discussant, "Does Presidential Leadership in Foreign Policy Matter?" APSA, Chicago, September 2-5, 2004.

Roundtable member, "The Ins and Outs of Obtaining a Book Contract," APSA, Chicago, September 2-5, 2004.

Discussant, "Presidential Power: Lessons From the Past," APSA, Washington, D.C., September 1-4, 2005.

Chair and Discussant, "The Unitary Executive in a Separated System," APSA, Philadelphia, August 31-September 3, 2006.

Panel chair, "The Culpability of Congress," Conference on Presidential Power in America: The Constitution, the Defense of a Nation and the National Ethos, Massachusetts School of Law Conference Series, Andover, MA, October 14-15, 2006.

Panel chair, "Keeping the Modern Presidency in Check and Balance," APSA, Chicago, August 30-September 2, 2007.

Discussant, "Presidential Endings: George W. Bush and the Final Two Years," APSA, Chicago, August 30-September 2, 2007.

Discussant, "Staffing and Decisionmaking in the White House," APSA, Boston, August 28-31, 2008.

Panel Chair, "Early Assessments of the Obama Presidency," APSA, Washington, D.C., September 2-5, 2010.

Discussant, "Historical Perspectives on the Presidency," APSA, Chicago, August 29-Sept. 1, 2013.

Discussant, "Politics and Presidential Travel," APSA, Washington, D.C., August 27-31, 2014.

Discussant, "The Obama Presidency and Constitutional Law," APSA, San Francisco, Sept. 3-6, 2015.

Discussant, "Presidents, the Courts and the Law," APSA, Philadelphia, Sept. 1-4, 2016.

Discussant, "Executive Power and Democratic Functioning in the Trump Era," APSA, Boston, MA, August 30-September 2, 2018.

Panel chair, "Assessing the Presidency of Donald Trump," APSA, Washington, DC, August 29-September 1, 2019.

Roundtable, "Gun Law, Politics, and Policy," Midwest Political Science Association, April 17, 2021 (virtual).

Roundtable, "Guns and the Political Moment: Political Violence, Self-Defense, and Reckoning with Race," Midwest Political Science Association, Chicago, April 7, 2022.

#### Book Reviews:

The American Presidency, by Richard M. Pious, reviewed in The Journal of Politics, November, 1979.

The Politics of Mistrust, by Aaron Wildavsky and Ellen Tenenbaum, reviewed in Administrative Science Quarterly, December, 1981.

Review essay, The President as Policymaker, by Laurence E. Lynn and David DeF. Whitman, review essay in Administrative Science Quarterly, March, 1982.

PL94-142: An Act of Congress, by Erwin L. Levine and Elizabeth M. Wexler, reviewed in the American Political Science Review, June, 1982.

Pure Politics and Impure Science, by Arthur M. Silverstein, reviewed in Administrative Science Quarterly, June, 1984.

Review essay, The President's Agenda, by Paul Light, reviewed in Administrative

Science Quarterly, September, 1984.

The Evolution of American Electoral Systems, by Paul Kleppner, et al., reviewed in the American Political Science Review, December, 1983.

A Case of Third Party Activism, by James Canfield, reviewed in Perspective, July-August, 1984.

Winners and Losers: Campaigns, Candidates and Congressional Elections, by Stuart Rothenberg, reviewed in the American Political Science Review, December, 1984.

The Political Presidency, by Barbara Kellerman, reviewed in Perspective, January-February, 1985.

Presidents and Promises, by Jeff Fishel, reviewed in the American Political Science Review, December, 1985.

The Elections of 1984, ed. by Michael Nelson, reviewed in Perspective, May/June, 1985.

Economic Conditions and Electoral Outcomes, by Heinz Eulau and Michael S. Lewis-Beck, reviewed in Perspective, May/June, 1986.

Presidential Transitions: Eisenhower Through Reagan, by Carl M. Brauer, in Perspective, January/February, 1987.

Religion and Politics in the United States, by Kenneth D. Wald, in Journal for the Scientific Study of Religion, September, 1988.

Abortion and Divorce in Western Law, by Mary Ann Glendon, in The Annals of the American Academy of Political and Social Science, September, 1988.

The American Political Economy, by Douglas Hibbs, in Perspective, Spring, 1988.

God in the White House, by Richard G. Hutcheson, Jr., in Perspective, Fall, 1988.

The Reagan Legacy, Charles O. Jones, ed., in Social Science Quarterly, June, 1989.

Dilemmas of Presidential Leadership From Washington Through Lincoln by Richard Ellis and Aaron Wildavsky, in Perspective, September, 1989.

Taming the Prince by Harvey Mansfield, Jr., in Governance, April, 1990.

Public Policy and Transit System Management, ed. by George M. Guess, in Perspective,

Spring, 1991.

The Myth of Scientific Public Policy, by Robert Formaini, in Perspective, Winter, 1992.

The Bush Presidency: First Appraisals, ed. by Colin Campbell and Bert Rockman in Public Administration Review, May/June, 1992.

The Illusion of a Conservative Reagan Revolution, by Larry Schwab, in Policy Currents, May, 1992.

The Vital South: How Presidents Are Elected, by Earl Black and Merle Black, in Perspective, Fall, 1993.

The Presidential Pulse of Congressional Elections, by James E. Campbell, in The Journal of American History, March, 1995.

Out of Order, by Thomas Patterson, in Presidential Studies Quarterly, Summer, 1994.

Congress, the President, and Policymaking, by Jean Schroedel, in the American Political Science Review, December, 1994.

The President and the Parties, by Sidney Milkis, in Governance, January 1995.

The Myth of the Modern Presidency, by David K. Nichols, PRG Report, Spring, 1995.

The End of the Republican Era, by Theodore Lowi, The Journal of American History, December, 1995.

Strategic Disagreement: Stalemate in American Politics by John B. Gilmour, in Governance (9), 1996.

Rivals For Power: Presidential-Congressional Relations, by James Thurber, in American Political Science Review, March, 1997.

American Presidential Elections, ed. by Harvey Schantz, in Perspectives, Spring 1997.

The Power of Separation by Jessica Korn, in Congress & the Presidency, Spring 1997.

Strong Presidents by Philip Abbott, in Perspective, Fall 1997.

Other People's Money: Policy Change, Congress, and Bank Regulation, by Jeffrey Worsham, in Perspectives, Spring 1998.

A Third Choice, in Journal of American History, December 1998.

Politics, Power and Policy Making: The Case of Health Care Reform in the 1990s, by Mark Rushefsky and Kant Patel in Perspectives, Winter 1999.

The Paradoxes of the American Presidency, by Thomas Cronin and Michael Genovese, for the American Political Science Review, March 1999.

Republic of Denial, by Michael Janeway, for Perspectives, Spring 2000.

The Art of Political Warfare, by John Pitney, Rhetoric and Public Affairs, Summer 2001.

Arming America, by Michael Bellesiles, Congress Monthly, January/February 2002.

Gun Violence in America by Alexander DeConde, Law and Politics Book Review, August 2001; also in Historynewsnetwork.org, 8/01.

Presidents as Candidates, by Kathryn D. Tenpas, in Rhetoric and Public Affairs, Spring 2002.

The Trouble With Government, by Derek Bok, Perspectives, Spring 2002.

King of the Mountain, by Arnold M. Ludwig, Rhetoric and Public Affairs, Winter 2002.

Power, the Presidency, and the Preamble, by Robert M. Saunders, Presidential Studies Quarterly, December 2002.

Presidents, Parliaments, and Policy, ed. by Stephen Haggard and Mathew McCubbins, Perspectives, Winter 2003.

The Modern American Presidency, by Lewis L. Gould, Rhetoric and Public Affairs.

Watergate: The Presidential Scandal that Shook America, by Keith W. Olson, Perspectives, Summer 2003.

The Militia and the Right to Arms, or, How the Second Amendment Fell Silent, by H. Richard Uviller and William G. Merkel, Journal of American History, March 2004.

Power Without Persuasion: The Politics of Direct Presidential Action, by William G. Howell, Perspectives on Politics, June 2004.

The George W. Bush Presidency: An Early Assessment, ed. By Fred Greenstein, Perspectives, Spring 2004.

The Invention of the United States Senate, by Daniel Wirls and Stephen Wirls, Perspectives, Summer 2004.

The Mythic Meanings of the Second Amendment, by David C. Williams, Law and Politics Book Review, April 2004.

Empowering the White House, by Karen M. Hult and Charles E. Walcott, Rhetoric and Public Affairs, Fall 2005.

Defining Americans: The Presidency and National Identity, by Mary E. Stuckey, Perspectives, Spring 2005.

Presidential Leadership: Rating the Best and Worst in the White House, ed. By James Taranto and Leonard Leo, Rhetoric and Public Affairs, Summer 2006.

A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America, by Saul Cornell, American Journal of Legal History, October 2006.

The Founders' Second Amendment: Origins of the Right to Bear Arms, by Stephen Halbrook, Law and Politics Book Review 18(October 2008).

Out of the Shadow: George H.W. Bush and the End of the Cold War, by Christopher Maynard, Journal of American History (September 2009).

Guns, Democracy, and the Insurrectionist Idea, by Joshua Horwitz, Law and Politics Book Review 19(June 2009).

Talking Together, by Lawrence Jacobs, Fay Lomax Cook, and Michael Delli Carpini, dailykos.com, posted June 20, 2009, with Glenn Altschuler.

Accidental Presidents, by Philip Abbott, Presidential Studies Quarterly, June 2010.

The Co-Presidency of Bush and Cheney, by Shirley Anne Warshaw, Congress and the Presidency, 2010.

Crisis and Command: The History of Executive Power from George Washington to George W. Bush, by John Yoo, Presidential Studies Quarterly (December 2010).

Declaring War: Congress, the President, and What the Constitution Does Not Say, by Brien Hallett, Law and Politics Book Review 22(November 2012).

Congress vs. the Bureaucracy: Muzzling Agency Public Relations, by Mordecai Lee, The



Journal of American History (December 2012).

Arming and Disarming, by R. Blake Brown, Law and History Review (November 2013).

Reclaiming Accountability: Transparency, Executive Power, and the U.S. Constitution, by Heidi Kitrosser, Congress and the Presidency 42(2015).

The Six-Shooter State: Public and Private Violence in American Politics by Jonathan Obert and The Lives of Guns ed. by Jonathan Obert, Andrew Poe and Austin Sarat, Perspectives on Politics 17(September 2019).

The Toughest Gun Law in the Nation by James B. Jacobs and Zoe Fuhr, Criminal Law and Criminal Justice Books, March 2020.

Warped Narratives: Distortion in the Framing of Gun Policy by Melissa K. Merry, Perspectives on Politics 18(September 2020).

The Uses and Misuses of Politics: Karl Rove and the Bush Presidency by William G. Mayer, Presidential Studies Quarterly (December 2022).

#### Selected Media Appearances/Quotations:

NBC's "Today Show"; ABC's "Good Morning America" and "Network Nightly News"; PBS's "News Hour"; CNN's "Lou Dobbs," "NewsStand," "CNN & Co." CNN's HLN, and "Insight"; CNBC's "Upfront Tonight"; MSNBC's "Countdown with Keith Olbermann," "All In With Chris Hayes," "Ali Velshi," "Fresh Air With Terry Gross," "The Diane Rehm Show," 1A with Joshua Johnson, NPR; NHK Television (Japan); CGTN (China), documentary films "Guns and Mothers" (PBS, 2003), "Under the Gun" (Katie Couric Film Company, Epix, 2016), "The Price of Freedom" (Flatbush Pictures/Tribeca Films, 2021). Quoted in or by the New York Times, the Washington Post, Time Magazine, Newsweek, Der Spiegel (Germany), USA Today, the Los Angeles Times, the Wall Street Journal, the Christian Science Monitor, the Boston Globe, the Chicago Tribune, the Philadelphia Inquirer, the Miami Herald, Houston Chronicle, the St. Louis Post-Dispatch, San Francisco Chronicle, the Dallas Morning News, the Baltimore Sun, the Detroit Free Press, the Seattle Post-Intelligencer, Newsday, the Denver Post, Kansas City Star, Dallas News, Pittsburgh Post-Gazette, New Orleans Times Picayune, Orlando Sentinel, Columbus Dispatch, Buffalo News, San Jose Mercury News, Albany Times-Union, St. Petersburg Times, Arkansas Democrat-Gazette, Newark Star-Ledger, Bergen Record, Congress Daily, The Hill, CQ Report, Rolling Stone, The Nation, Ladies Home Journal, the National Journal, The Spectator, Legal Times, Financial Times, Toronto Globe, al Jazeera, Reuters, Bloomberg News, Knight Ridder, AP, Gannett, Newhouse, Scripps Howard, McClatchy, Hearst, the BBC (Britain), CBC (Canada), the

Voice of America, Radio Free Europe, ABC News Online, Fox News Online, National Public Radio, CBS Radio, media outlets in South Korea, India, Brazil, Denmark, Spain, France, Norway, Germany.

Regular panelist on "The Ivory Tower," a weekly public affairs program broadcast on WCNY-TV, Syracuse, NY, from 2002-2021. A half hour discussion of the week's events conducted by five academics from area colleges.

**Professional Associations:**

Scholars Strategy Network.  
American Political Science Association.  
Center for the Study of the Presidency.  
Presidents and Executive Politics Section (formerly the Presidency Research Group), APSA; served on Governing Board of PRG, 1991 to 2003.  
New York Political Science Association.  
Pi Sigma Alpha.  
Phi Kappa Phi.

**Teaching Areas:**

American Government: courses taught include Introduction to American Government, The Legislative Process, Political Parties and Social Movements, The American Presidency, Media and Politics, Gun Control Politics and Policy, State and Local Government, Abortion Politics, Elections and American Politics, Media and War, internships in Washington, D.C., Albany, and Cortland County, Seminars on the Decline of Parties and Third Parties, American Institutions, Current Developments in American Politics, and Introduction to College Life.

Public Policy: courses taught include Introduction to Public Policy, Gun Policy. Areas of interest include policy theory, policy formation and decisionmaking, and policy implementation.

**Teaching-Related Awards:**

Three-time recipient of the SUNY Cortland Student Government Association Outstanding Faculty Award (the "DiGiusto Award"), 1987, 1991, and 2003, for "Outstanding Service to Students." (The only faculty member ever to win this award more than once.)

Other Professional Activities

External Reviewer, University of Michigan-Dearborn, Project to Expand Promotion and Tenure Guidelines (PTIE) to Inclusively Recognize Innovation and Entrepreneurial Impact, 2021.

Member, Howard Penniman Graduate Scholarship Selection Committee, Pi Sigma Alpha, 2018.

Member, Advisory Board of Pi Sigma Alpha Undergraduate Journal of Politics, 2014-2016.

Executive Council, Pi Sigma Alpha National Board, 2014-18.

Fund and organizing leader for American Political Science Association's new Distinguished Teaching Award, 2011-12.

Chair, Presidency Research Group Task Force on Membership and Recruitment, 2007-08.

Chair, Richard E. Neustadt Award Committee for Best Book on the Presidency published in 2005, Presidency Research Group, 2006.

President, Presidency Research Group, American Political Science Association, 2001-2003; Vice-President 1999-2001.

Chair, Best Paper Award Committee, Presidency Research Group, American Political Science Association, for 1991 and 1992 conferences.

Member, Governing Board of the Presidency Research Group of the American Political Science Association, 1991-2003.

Editor, PRG Report, 1993-1997.

Board of Editors, State University of New York Press, 1993-1996; 1997-2000. Board Chair, 1998-2000.

Member, Leonard D. White Award Committee for Best Dissertation in Public Administration, American Political Science Association, 1995.

Conference Organizing Committee, "Presidential Power: Forging the Presidency for the 21st Century," Columbia University, November 15-16, 1996.

Chair, E.E. Schattschneider Award Committee, best doctoral dissertation in American Politics, American Political Science Association, 1997.

Secretary/Treasurer, Presidency Research Group, 1997-99.

Book and article reviews for Houghton Mifflin, Cengage Learning, Random House, McGraw-Hill, St. Martins, W.W. Norton, Oxford University Press, Cambridge University Press, University of Chicago Press, University of California Press, Princeton University Press, Cornell University Press, UNC Press, Pearson Longman, Allyn & Bacon, Palgrave/Macmillan, University of New Mexico Press, Texas A&M University Press, Chatham House, CQ Press, HarperCollins, SUNY Press, Thompson Wadsworth, University of Michigan Press, University of Missouri Press, Westview Press, Brookings Institution, Rowman and Littlefield, Routledge, University of Alabama Press, American Political Science Review, PS, Comparative Politics, American Journal of Political Science, Policy Studies Journal, Policy Studies Review, Political Science Quarterly, the Journal of Politics, Western Political Quarterly, Polity, Social Science Quarterly, Political Behavior, American Politics Quarterly, Political Communication, Legislative Studies Quarterly, Government and Policy, Congress and the Presidency, Social Science Journal, Journal of Policy History, Political Research Quarterly, Presidential Studies Quarterly, Politics and Policy, and the National Science Foundation.

#### Selected Community Service

Administrative Law Judge/Hearing Officer for Cortland County Board of Health, 1994-present; for Tompkins County, 1997-present; for Chenango County, 1997-present; for Madison County, 2006-2021.

Member, City of Cortland Planning Commission, 2009-2012.

Chair, SUNY Press Board of Editors, 1998-2000 (board member 1993-96, 1997-2000).

Board President, Cortland County Arts Council, 1989-1990 (board member, 1987-1990).

Chair, Homer Zoning Board of Appeals, 1995-1997; board member 1988-1997.

Board member, Cortland County Landmark Society, 1989-1995.

Chair, Planning Committee on Codes and Safety for the village of Homer's Odyssey 2010 Project, 1996.

**E      IBIT B**

## EXHIBIT B

FIREARM HARDWARE RESTRICTIONS TABLE  
(YEARS OF ENACTMENT)<sup>1</sup>

STATE <sup>2</sup>	TRAP GUNS <sup>3</sup>	CONCEALED CARRY <sup>4</sup>	AUTOMATIC FIREARMS	SEMI-AUTOMATIC FIREARMS	AMMUNITION FEEDING DEVICES/ FIRING LIMITS
Alabama		1839, 1841			
Alaska		1896			
Arizona		1889			
Arkansas		1820, 1837			
California		1850, 1864	1927, 1933		1927, 1933
Colorado		1862			
Connecticut		1890, 1923			
Delaware		1852	1931		
District of Columbia		1857, 1871	1932	1932	1932
Florida		1887	1913 <sup>5</sup> , 1933		
Georgia		1837			
Hawaii		1913	1933		1933
Idaho		1909			

<sup>1</sup> Further research may yield additional laws regulating firearm hardware.

<sup>2</sup> In addition to state laws, this chart provides the year of enactment of local ordinances adopted within the states.

<sup>3</sup> Sometimes trap guns were also referred to as “infernal machines.”

<sup>4</sup> These laws prohibited the concealed carrying of certain enumerated weapons or types of weapons. The early laws restricted general weapons carrying, whether concealed or open.

<sup>5</sup> “It shall, at any time, be unlawful to hunt wild game in Marion County with guns—known as Automatic guns.”

Illinois		1881	1931	1931 <sup>†</sup>	1931
Indiana		1820	1927, 1929		
Iowa		1882, 1887, 1897, 1929	1927		
Kansas		1901	1933		
Kentucky		1812, 1813			
Louisiana		1813	1932	1932 <sup>†</sup>	1932
Maine		1840			
Maryland	1910	1872	1927		
Massachusetts		1751	1927	1927	1927
Michigan	1875, 1931	1887	1927, 1929	1927, 1929	1927
Minnesota	1873, 1903	1881	1933	1933	1933
Mississippi		1878			
Missouri	1891 <sup>6</sup>	1873	1929		1929
Montana		1864, 1865			
Nebraska		1881	1929		
Nevada		1881, 1925			
New Hampshire	1915				
New Jersey	1771	1686	1927, 1934		1920, 1927
New Mexico		1852, 1853			
New York	1870 <sup>7</sup>	1891	1931, 1933		

<sup>6</sup> Chillicothe, Mo.: “George Dowell, a young farmer, was fined \$50 under an old law for setting a trap-gun. Dowell set the gun in his corn-crib to catch a thief, but his wife was the first person to visit the crib and on opening the door was shot dead.” “Shot by a Trap-Gun,” South Bend Tribune, Feb. 11, 1891, <https://bit.ly/3CtZsfk>.

<sup>7</sup> New York City, NY: A burglar was killed by a gun-trap set by a shopkeeper at 301 East 23rd St. A jury concluded that the burglar’s death was caused by the trap-gun. The article notes: “As there is a statute against the use of such infernal machines, which might cause loss of life to some innocent person, the jury censured



North Carolina		1792			1917
North Dakota	1891, 1895	1895	1931		1931
Ohio		1859	1933	1933	1933
Oklahoma		1890			
Oregon	1925	1853	1933		1933
Pennsylvania		1851	1929		1929
Rhode Island	1890, 1892	1893	1927	1927	1927
South Carolina	1855, 1931	1880	1934	1934 <sup>†</sup>	1934
South Dakota	1909	1877	1933	1933	1933
Tennessee		1821			
Texas		1870	1933		1933
Utah	1865, 1901	1877, 1888			
Vermont	1884, 1912	1895, 1897	1923		1923
Virginia		1794, 1838	1934	1934	1934
Washington	1909	1881	1933		1933
West Virginia		1870	1925		
Wisconsin	1872, 1921	1858	1929, 1933		1933
Wyoming		1876	1933		
Total Laws	16	50	31	8–11	23

SOURCE: Duke Law, Duke Center for Firearms Law, Repository of Historical Gun Laws, <https://firearmslaw.duke.edu/repository/search-the-repository/>

<sup>†</sup>Ambiguous law that could apply to semi-automatic in addition to automatic firearms.

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Agostino.” After the verdict the man continued to be held under \$2000 bail. “The Man Trap,” The Buffalo Commercial, Nov. 1, 1870; from the N.Y. Standard, Oct. 29, 1870, <https://bit.ly/3SDv2Nf>.

**E IBIT C**

## EXHIBIT C

DANGEROUS WEAPONS RESTRICTIONS  
(YEARS OF ENACTMENT)<sup>1</sup>

STATE <sup>2</sup>	BOWIE KNIVES	Bludgeon	Billy/Billie Clubs	Clubs	Slung Shot	Sand Bag Sand Club	Pistols	Any Concealed /Deadly/Dan gerous Weapon
Alabama	1837, 1839, 1841, 1867, 1876, 1877, 1879, 1892			1805	1873		1839, 1841	
Alaska	1896 <sup>†</sup>				1896-99		1896	1896
Arizona	1889, 1901				1873, 1889 1893, 1901		1889	1867
Arkansas	1871, 1875			1835	1871		1820, 1837	
California	1855, 1896	1849, 1853, 1876	1917, 1923		1864, 1923	1917, 1923	1850, 1864	1849
Colorado	1862, 1867, 1877, 1881	1876			1886		1862	1862
Connecticut	1890 <sup>†</sup>				1890		1890, 1923	
Delaware	1881 <sup>†</sup>			1797			1852	

<sup>1</sup> Further research may yield additional laws regulating dangerous weapons.<sup>2</sup> In addition to state laws, this chart provides the year of enactment of local ordinances adopted within the states.

District of Columbia	1871				1871		1857, 1871	
Florida	1835, 1868, 1893 <sup>†</sup>		1888		1868, 1888		1887	
Georgia	1860, 1873	1816			1860		1837	
Hawaii	1852, 1913				1852, 1913		1913	
Idaho	1879, 1909	1875			1879		1909	1864
Illinois	1876, 1881	1845			1881, 1893		1881	
Indiana	1859			1804, 1855, 1881, 1905	1875, 1905		1820	1831
Iowa	1882, 1887, 1900		1882		1882	1887, 1900	1882, 1887, 1897, 1929	
Kansas	1862, 1883, 1887		1862, 1887		1883, 1887, 1899		1901	
Kentucky	1859			1798	1859		1812, 1813	
Louisiana	1870						1813	1813, 1842, 1870
Maine	1840, 1841, 1884 <sup>†</sup>			1786			1840	1841
Maryland	1872, 1886, 1888, 1890	1809, 1874, 1886	1872, 1874, 1884, 1886, 1890, 1927		1886	1890	1872	
Massachusetts	1836 <sup>†</sup>			1750	1850, 1927		1751, 1814	
Michigan	1891	1927, 1929	1887, 1891, 1927, 1929	1913	1887, 1891, 1929	1887, 1891, 1927, 1929	1887	
Minnesota	1882				1882, 1888	1888	1881	1882
Mississippi	1878			1799, 1804	1878		1878	
Missouri	1871, 1897, 1917, 1923		1871, 1897, 1923	1818	1883, 1888, 1897, 1917		1873	

Montana	1864, 1879, 1885	1887					1864, 1865	1888
Nebraska	1877, 1890, 1899	1858	1872, 1890, 1899		1890		1881	
Nevada	1873	1872			1881		1881, 1925	
New Hampshire								
New Jersey	1871, 1905 <sup>†</sup>	1799, 1877, 1927	1871, 1927		1871, 1873, 1927	1871, 1927	1686	
New Mexico	1853, 1887	1887			1853, 1859, 1869, 1887		1852, 1853	
New York	1866, 1885, 1911 <sup>†</sup>	1911, 1913, 1931	1866, 1881, 1884, 1885, 1900, 1911, 1913, 1931	1664	1866	1866, 1881, 1900, 1911, 1913, 1931	1891	
North Carolina	1858, 1879				1879		1792, 1858	1858
North Dakota	1895, 1915 <sup>†</sup>	1915	1915		1895	1915	1895	
Ohio	1859, 1880, 1890						1859	1788, 1859, 1880
Oklahoma	1890, 1891, 1903		1890, 1891		1890, 1891, 1903	1890	1890	
Oregon	1885 <sup>†</sup>		1898, 1917		1885, 1917	1917	1853	
Pennsylvania	1897		1897		1851		1851	
Rhode Island	1893, 1896, 1908		1893, 1908		1893, 1896		1893	
South Carolina	1880, 1923				1880		1880	
South Dakota	1903 <sup>†</sup>				1877, 1903		1877	
Tennessee	1838, 1856, 1863, 1867,				1879, 1882, 1893		1821	

	1871, 1881, 1893							
Texas	1871, 1897			1899	1871, 1879, 1889, 1897, 1899		1870	
Utah	1877						1877, 1888	
Vermont	1895 <sup>†</sup>				1895		1895, 1897	
Virginia	1887			1792	1887		1794	
Washington	1854, 1859 1869						1881	1854, 1859, 1869, 1881, 1883, 1892, 1896, 1897
West Virginia	1882, 1891, 1925		1870, 1882, 1891, 1925		1891		1870	
Wisconsin	1883				1883, 1888		1858	1883
Wyoming	1884	1876, 1893			1884, 1890, 1899		1876	
Total Laws	106	25	44	17	79	21	64	24

SOURCE: <https://firearmslaw.duke.edu/repository/search-the-repository/>

<sup>†</sup> States that prosecuted/regulated/barred knives more generally without specifically mentioning Bowie knives.

## **EXHIBIT D**



EXHIBIT D

MACHINE GUN AND SEMI-AUTOMATIC FIREARMS LAWS<sup>1</sup>

**CALIFORNIA:**

1927 Cal. Stat. 938, An Act to Prohibit the Possession of Machine Rifles, Machine Guns and Submachine Guns Capable of Automatically and Continuously Discharging Loaded Ammunition of any Caliber in which the Ammunition is Fed to Such Guns from or by Means of Clips, Disks, Drums, Belts or other Seperable Mechanical Device, and Providing a Penalty for Violation Thereof, ch. 552, §§ 1-2.

§ 1. . . . [E]very person, firm or corporation, who within the State of California possesses any firearm of the kind commonly known as a machine gun shall be guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the state prison not to exceed three years or by a fine not to exceed five thousand dollars or by both such fine and imprisonment. Provided, however that nothing in this act shall prohibit police departments and members thereof, sheriffs, and city marshals or the military or naval forces of this state or of the United States from possessing such firearms for official use in the discharge of their duties.

§ 2. The term machine gun as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

1933 Cal. Stat. 1169

§ 2. [E]very person, firm or corporation, who within the State of California sells, offers for sale, possesses or knowingly transports any firearms of the kind commonly known as a machine gun . . . is guilty of a public offense...

§ 3. The term machine gun as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns, or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, discs, drums, belts or other separable mechanical device and all firearms which are automatically fed after each discharge from or by means of clips, discs, drums,

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<sup>1</sup> Further research may yield additional laws regulating firearm hardware.

belts or other separable mechanical device having a capacity greater than ten cartridges.

1933 Cal. Stat. 1169

§ 2. [E]very person, firm or corporation, who within the State of California sells, offers for sale, possesses or knowingly transports any firearms of the kind commonly known as a machine gun ... is guilty of a public offense...

§ 3. The term machine gun as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns, or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, discs, drums, belts or other separable mechanical device and all firearms which are automatically fed after each discharge from or by means of clips, discs, drums, belts or other separable mechanical device having a capacity greater than ten cartridges.

#### **DELAWARE:**

1931 Del. Laws 813, An Act Making it Unlawful for any Person or Persons Other than the State Military Forces or Duly Authorized Police Departments to have a Machine Gun in his or their Possession, and Prescribing a Penalty for Same, ch. 249, § 1.

On and after the passage and approval of this Act it is and shall be unlawful for any person or persons other than the State Military Forces or duly authorized Police Departments to have a machine gun in his or their possession, within the State of Delaware. Any person or persons convicted under the provisions of this Act shall be deemed guilty of a felony and shall be punished by either fine or imprisonment, or both, in the discretion of the Court . . . .

#### **DISTRICT OF COLUMBIA:**

District of Columbia 1932:

1932, Public-No. 275-72D Congress

CHAPTER 465

H.R. 8754

AN ACT To Control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties to prescribe rules of evidence, and for other purposes.

DEFINITIONS

SECTION 1. "Pistol," as used in this Act, means any firearm with a barrel less than twelve inches in length. "Sawed-off shotgun" as used in this Act, means any shotgun with a barrel less than twenty inches in length. "Machine gun," as used in this Act, means any firearm which shoots automatically or semiautomatically more than twelve shots without reloading. . . .

SEC. 2. If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years.

#### PERSONS FORBIDDEN TO POSSESS CERTAIN FIREARMS

SEC. 3. No person who has been convicted in the District of Columbia or elsewhere of a crime of violence shall own or have in his possession a pistol, within the District of Columbia.

#### CARRYING CONCEALED WEAPONS

SEC. 4. No person shall within the District of Columbia carry concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon.

#### EXCEPTIONS

SEC. 5. The provisions of the preceding section shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law -enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place

of repair or back to his home or place of business or in moving goods from one place of abode or business to another.

#### ISSUE OF LICENSES TO CARRY

SEC. 6. The superintendent of police of the District of Columbia may, upon the application of any person having a bona fide residence or place of business within the District of Columbia or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol within the District of Columbia for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed. The license shall be in duplicate, in form to be prescribed by the Commissioners of the District of Columbia and shall bear the name, address, description, photograph, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, and the duplicate shall be retained by the superintendent of police of the District of Columbia and preserved in his office for six years.

SEC. 7. No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is a drug addict, or is a person who has been convicted in the District of Columbia or elsewhere of a crime of violence or, except when the relation of parent and child or guardian and ward exists, is under the age of eighteen years.

#### TRANSFERS REGULATED

SEC. 8. No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number of the pistol to be purchased and a statement that he has never been convicted in the District of Columbia or elsewhere of a crime of violence. The seller shall, within six hours after such application, sign and attach his address and deliver one copy to such person or persons as the superintendent of police of the District of Columbia may designate, and shall retain the other copy for six years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section

14 hereof as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

#### DEALERS TO BE LICENSED

SEC. 9. No retail dealer shall within the District of Columbia sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as hereinafter provided. No wholesale dealer shall, within the District of Columbia, sell, or have in his possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack.

#### DEALERS' LICENSES, BY WHOM GRANTED AND CONDITIONS THEREOF

SEC. 10. The Commissioners of the District of Columbia may, in their discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in section 9 hereof, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this Act. 1. The business shall be carried on only in the building designated in the license. 2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read. 3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is a drug addict or has been convicted in the District of Columbia or elsewhere of a crime of violence or is under the age of eighteen years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 14 hereof as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. 4. A true record shall be made in a book kept for the purpose the form of which may be prescribed by the Commissioners, of pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale. 5. A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Commissioners of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other

and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement signed by the purchaser that he has never been convicted in the District of Columbia or elsewhere of a crime of violence. One copy of said record shall, within seven days, be forwarded by mail to the superintendent of police of the District of Columbia and the other copy retained by the seller for six years. 6. No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section.

#### FALSE INFORMATION FORBIDDEN

SEC. 11. No person, shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his identity.

#### ALTERATION OF IDENTIFYING MARKS PROHIBITED

SEC. 12. No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia: Provided, however, That nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work.

SEC. 13. This Act shall not apply to toy or antique pistols unsuitable for use as firearms.

SEC. 14. No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, sand club, sandbag, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: Provided, however, That machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly appointed law -enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public



carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under section 10 of this Act.

#### PENALTIES

SEC. 15. Any violation of any provision of this Act for which no penalty is specifically provided shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

#### CONSTITUTIONALITY

SEC. 16. If any part of this Act is for any reason declared void, provision not to affect remainder, such invalidity shall not affect the validity of the remaining portions of this Act.

Approved, July 8, 1932.

[https://www.loc.gov/resource/lisalvol.lisal\\_047/?sp=675&st=text&r=0.041,0.112,0.75,0.862,0](https://www.loc.gov/resource/lisalvol.lisal_047/?sp=675&st=text&r=0.041,0.112,0.75,0.862,0)

#### **FLORIDA:**

1913 Fla. 117, An Act to Regulate the Hunting of Wild Deer etc., § 8.

It shall, at any time, be unlawful to hunt wild game in Marion County with guns—known as Automatic guns.

1933 Fla. Laws 623, An Act to Prevent Throwing of Bombs and the Discharge of Machine Guns Upon, or Across Any Public Road in the State of Florida . . . , ch. 16111, § 1.

That it shall be unlawful for any person to throw any bomb or to shoot off or discharge any machine guns upon, across or along any road, street or highway in the State of Florida, or upon or across any public park in the State of Florida, or in, upon or across any public place where people are accustomed to assemble in the State of Florida, and the casting of such bomb or the discharge of such machine gun in, upon or across such public street, or in, upon or across such public park, or in, upon or across such public place, whether indoors or outdoors, including all theatres and athletic stadiums, with intent to do bodily harm to any person or with intent to do damage to the property of any person, shall be a felony and shall be punishable by death.



**HAWAII:**

1933 Haw. Special Sess. Laws 117, An Act . . . Regulating The Sale, Transfer And Possession Of Certain Firearms, Tear Gas And Ammunition: § 2.

Except as permitted under the provisions of this Act, no person, firm or corporation shall own, possess, sell, offer for sale or transport any firearm of the kind commonly known as a machine gun or any shell cartridge or bomb containing or capable of emitting tear gas or any other noxious gas. Provided, however, that nothing in this Act contained shall prohibit the sale to, purchase by, or possession of such firearms by any city and county, county, territorial or federal officer where such firearms are required for professional use in the discharge of his duties, nor to the transportation of such firearms for or on behalf of police departments and members thereof, sheriffs, or the military or naval forces of this Territory or of the United States and “Provided, further that nothing in this Act shall prohibit police departments and members thereof, sheriffs, or the military or naval forces of the territory or of the United States from possessing or transporting such shells, cartridges or bombs for professional use in the discharge of their duties. “The term ‘shell, cartridge or bomb’, as used in this Act shall be construed to apply to and include all shells, cartridges, or bombs capable of being discharged or exploded through or by the use of percussion caps, fuses, electricity, or otherwise, when such discharge or explosion will cause or permit the release or emission of tear gases. The term ‘machine gun’ as used in this Act shall be construed to apply to and include machine rifles, machine guns and submachine guns capable of automatically and continuously discharging loaded ammunition of any caliber in which the ammunition is fed to such guns from or by means of clips, disks, drums, belts or other separable mechanical device.”

1933 Haw. Sess. Laws 36, An Act Regulating the Sale, Transfer, and Possession of Firearms and Ammunition, § 2.

Definitions. “Firearm” as used in this Act means any weapon, the operating force of which is an explosive. This definition includes pistols, revolvers, rifles, shotguns, machine guns, automatic rifles, noxious gas projectors, mortars, bombs, cannon and sub-machine guns. The specific mention herein of certain weapons does not exclude from the definition other weapons operated by explosives.

“Crime of violence” as used in this Act means any of the following crimes, namely: murder, manslaughter, rape, kidnapping, robbery, burglary, and those certain crimes set forth in Sections 4130 and 4131 of said Revised Laws. “Pistol” or “revolver” as used in this Act, means and includes any firearm of any shape whatsoever with barrel less than twelve inches in length and capable of discharging loaded ammunition or any noxious gas. “Person” as used in this Act includes

individuals, firms, corporations and copartnerships, and includes wholesale and retail dealers.

**ILLINOIS:**

1931 Ill. Laws 452-53, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, §§ 1-2.

§ 1. For purposes of this Act the term “machine gun” applies to and includes all firearms commonly known as machine rifles, machine guns and sub-machine guns of any calibre whatsoever, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to such gun from or by means of clips, disks, belts, or other separable mechanical device. The term “manufacturer” shall apply to and include all persons dealing with machine guns as merchandise.

§ 2. It is unlawful for any person to sell, keep or offer for sale, loan or give away, purchase, possess, carry or transport any machine gun within this State, except that 1. Sheriffs, constables, marshals, police officers and other duly appointed peace officers may purchase, possess, carry and transport machine guns. 2. The provisions of this Act shall not apply to the Army, Navy or Marine Corps of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns from the United States, or from this State, and the members of such Corps, National Guard and organizations while on duty, may possess, carry and transport machine guns. 3. Persons, organizations or institutions possessing war relics may purchase and possess machine guns which are relics of any war in which the United States was involved, may exhibit and carry such machine guns in the parades of any military organization, and may sell, offer to sell, loan or give such machine guns to other persons, organizations or institutions possessing war relics. 4. Guards or messengers employed by common carriers, banks and trust companies, and pay-roll guards or messengers may possess and carry machine guns while actually employed in and about the shipment, transportation or delivery, or in the guarding of any money, treasure, bullion, bonds or other thing of value, and their employers may purchase or receive machine guns and keep them in their possession when such guns are not being used by such guards or messengers 5. Manufacturers and merchants may sell, keep or offer for sale, loan or give away, purchase, possess and transport, machine guns, in the same manner as other merchandise except as hereinafter provided, and common carriers may possess and transport unloaded machine guns, as other merchandise.

1931 Ill. Laws 453, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, § 4.

Every manufacturer or merchant shall keep a register of all machine guns manufactured or handled by him. This register shall show the date of the sale, loan, gift, delivery or receipt of any machine gun, the name, address and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received, and the purpose for which the person to whom the machine gun was sold, loaned, given or delivered, purchased or obtained said machine gun. Upon demand, every manufacturer or merchant shall permit any sheriff or deputy sheriff, or any police officer to inspect his entire stock of machine guns, parts and supplies therefor, and shall produce the register herein required and all written permits to purchase or possess a machine gun, which he has retained and filed in his place of business for inspection by such officer.

1931 Ill. Laws 454, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, § 7.

Any person committing or attempting to commit arson, assault, burglary, kidnapping, larceny, rioting, or robbery while armed with a machine gun shall be imprisoned in the penitentiary for his natural life, or for a term not less than five years.

### **INDIANA:**

1927 Ind. Acts 469, Public Offenses—Ownership, Possession or Control of Machine Guns or Bombs—Penalty, ch. 156, § 1.

. . . [W]hoever shall be the owner of, or have in his possession, or under his control, in an automobile, or in any other way, a machine gun or bomb loaded with explosives, poisonous or dangerous gases, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned for a term of not less than one year nor more than five years.

1927 Ind. Acts 469, Operation of Machine Guns, Discharge of Bombs—Offense and Penalty, ch. 156, § 2.

Whoever shall discharge, fire off, or operate any loaded machine gun, or whoever shall drop from an airplane, automobile, or from any building or structure, or who shall throw, hurl, or drop from ground or street, or keep in his possession and under his control any bomb filled with deadly or dangerous explosives, or dangerous or poisonous gases, shall be deemed guilty of a felony and upon conviction shall be imprisoned for a term of not less than two nor more than ten years.

1929 Ind. Acts 139, Criminal Offenses—Commission of or Attempt to Commit Crime While Armed with Deadly Weapon, ch.55, § 1.

Be it enacted by the general assembly of the State of Indiana, That any person who being over sixteen years of age, commits or attempts to commit either the crime of rape, robbery, bank robbery, petit larceny or grand larceny while armed with a pistol, revolver, rifle, shotgun, machine gun or any other firearm or any dangerous or deadly weapon, or while any other person present and aiding or assisting in committing or attempting to commit either of said crimes is armed with any of said weapons, shall be guilty of a separate felony in addition to the crimes above named and upon conviction shall be imprisoned for a determinate period of not less than ten years nor more than twenty years . . . .

### **IOWA:**

1927 Iowa Acts 201, An Act to prohibit the Possession or Control of Machine Guns. . . ., §§ 1-2.

§ 1. No person, firm, partnership, or corporation shall knowingly have in his or its possession or under his or its control any machine gun which is capable of being fired from the shoulder or hip of a person, and by the recoil of such gun.

§ 2. No person, firm, partnership, or corporation shall do any act with the intent to enable any other person, firm, partnership, or corporation to obtain possession of such gun.

### **KANSAS:**

1933 Kan. Sess. Laws 76, An Act Relating to Machine Guns and Other Firearms Making the Transportation or Possession Thereof Unlawful in Certain Cases, Providing for Search, Seizure and Confiscation Thereof in Certain Cases, Relating to the Ownership and Registration of Certain Firearms, and Providing Penalties for the Violation of this Act, ch. 62, §§ 1-3.

§ 1. That it shall be unlawful for any person, firm, or corporation other than a sheriff or other peace officer or any military unit of the state or of the United States or any common carrier for hire, to transport or have in his possession or under his control a firearm known as a machine rifle, machine gun, or submachine gun: Provided, That banks, trust companies or other institutions or corporations subject to unusual hazard from robbery or holdup, may secure permits from the sheriff of the county in which they are located for one or more of their employees to have such firearms: Provided further, That museums, American Legions posts, and other

similar patriotic organizations may possess such firearms, when no usable as a weapon and when possessed as a curiosity, ornament or keepsake.

§ 2. That any person violating the provisions of the preceding section shall be guilty of a felony, and upon conviction shall be subject to imprisonment in the state penitentiary for not less than one year nor more than five years.

§ 3. Upon complaint being made on oath to any officer authorized to issue process for the apprehension of offenders that a firearm or firearms known as a machine rifles, machine guns or sub-machine guns as described in this act, are concealed in any particular house or place, and if such magistrate shall be satisfied that there are reasonable grounds for believing same to be true, he shall issue a warrant to search the house or place for such firearms . . . .

### **LOUISIANA:**

1932 La. Acts 337-38, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, and Providing a Penalty for a Violation Hereof . . . , §§ 1-2.

§ 1. . . . for the purpose of this Act the term “machine gun” applies to and include all firearms commonly known as machine rifles, machine guns and sub-machine guns of any caliber whatsoever, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to such gun from or by means of clips, disks, belts, or other separable mechanical device.

§ 2. It is unlawful for any person to sell, keep or offer for sale, loan or give away, purchase, possess, carry or transport any machine gun within this State, except that (exceptions for law enforcement, military, war relics, museums, guards, messengers) . . . .

### **MARYLAND:**

1927 Md. Laws 156, § 388-B.

That not person, persons house, company, association or body corporate, shall deposit, keep or have in his, her, their or its possession any spirituous or fermented liquors, or intoxicating drinks of any kind whatsoever, or any article used or sold as a beverage in the composition of which, whiskey, brandy, high wines or alcoholic, spirituous or fermented liquors shall be an ingredient or ingredients, in any automobile or other vehicle in which any device for the prevention or arrest or apprehension of said motor vehicle, or the occupants thereof of the type commonly known as a smoke screen is carried, whether the said device be attached as a part of said motor vehicle in which any gun, pistol, revolver, rifle machine gun, or other

dangerous or deadly weapon of any kind whatsoever is carried, whether in said automobile or vehicle, or on the person of any occupant of the same.

**MASSACHUSETTS:**

1927 Mass. Acts 416, An Act Relative to Machine Guns and Other Firearms, ch. 326, § 5 (amending §10)

. . . Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, a pistol or revolver, loaded or unloaded, or possesses a machine gun as defined in section one hundred and twenty-one of chapter one hundred and forty... or whoever so carries any stiletto, dagger, dirk knife, slung shot, metallic knuckles or sawed off shotgun, or whoever, when arrested upon a warrant for an alleged crime or when arrested while committing a crime or a breach or disturbance of the public peace, is armed with, or has on his person, or has on his person or under his control in a vehicle, a billy or dangerous weapon other than those herein mentioned, shall be punished by imprisonment for not less than six months nor more than two and a half years in a jail . .

1927 Mass. Acts 413, An Act Relative to Machine Guns and Other Firearms, ch. 326, §§ 1-2 (amending §§ 121, 123)

§ 1. In sections one hundred and twenty-two to one hundred and twenty-nine, inclusive, “firearms” includes a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of barrel, not including any revolving, detachable or magazine breach, does not exceed twelve inches, and a machine gun, irrespective of the length of the barrel. Any gun of small arm calibre designed for rapid fire and operated by a mechanism, or any gun which operates automatically after the first shot has been fired, either by gas action or recoil action, shall be deemed to be a machine gun for the purposes of said sections, and of sections one hundred and thirty-one and one hundred and thirty one B. . .

§ 2. . . Eighth, That no pistol or revolver shall be sold, rented or leased to a person who has not a permit, then in force, to purchase, rent or lease the same issued under section one hundred and thirty-one A, and that no machine gun shall be sold, rented or leased to a person who has not a license to possess the same issued under section one hundred and thirty-one. . .



**MICHIGAN:**

1927 Mich. Pub. Acts 888-89, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3.

It shall be unlawful within this state to manufacture, sell, offer for sale, or possess any machine gun or firearm which can be fired more than sixteen times without reloading, or any muffler, silencer or device for deadening or muffling the sound of a discharged firearm, or any bomb or bombshell, or any blackjack, slung shot, billy, metallic knuckles, sandclub, sandbag or bludgeon. Any person convicted of a violation of this section shall be guilty of a felony and shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state prison not more than five years, or by both such fine and imprisonment in the discretion of the court. . . .

1929 Mich. Pub. Acts 529, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3.

It shall be unlawful within this state to manufacture, sell, offer for sale or possess any machine gun or firearm which can be fired more than sixteen times without reloading or any muffler, silencer, or device for deadening or muffling the sound of a discharged firearm, or any bomb, or bomb shell, blackjack, slung shot, billy, metallic knuckles, sand club, sand bag, or bludgeon or any gas ejecting device, weapon, cartridge, container, or contrivance designed or equipped for or capable of ejecting any gas which will either temporarily or permanently disable, incapacitate, injure or harm any person with whom it comes in contact.

**MINNESOTA:**

1933 Minn. Laws 231-33, An Act Making It Unlawful to Use, Own, Possess, Sell, Control or Transport a “Machine Gun”, as Hereinafter Defined, and Providing a Penalty for the Violation Thereof, ch. 190, §§ 1-3.

§ 1. Definitions. (a) Any firearm capable of loading or firing automatically, the magazine of which is capable of holding more than twelve cartridges, shall be a machine gun within the provisions of the Act. (b) Any firearm capable of automatically reloading after each shot is fired, whether firing singly by separate trigger pressure or firing continuously by continuous trigger pressure; which said firearm shall have been changed, altered or modified to increase the magazine from the original design as manufactured by the manufacturers thereof, or by the addition thereto of extra and/or longer grips or stocks to accommodate such extra capacity, or by the addition, modification and/or attachment thereto of any other device capable of increasing the magazine capacity thereof, shall be a machine gun



within the provisions of this Act. (c) A twenty-two caliber light sporting rifle, capable of firing continuously by continuous trigger pressure, shall be a machine gun within the provisions of this Act. But a twenty-two caliber light sporting rifle, capable of automatically reloading but firing separately by separate trigger pressure for each shot, shall not be a machine gun within the provisions of this Act and shall not be prohibited hereunder, whether having a magazine capacity of twelve cartridges or more. But if the same shall have been changed, altered, or modified, as prohibited in section one (b) hereof, then the same shall be a machine gun within the provisions of this Act.

§ 2. Application. This Act shall not apply to sheriffs, coroners, constables, policemen or other peace officers, or to any warden, superintendent or head keeper of any prison, penitentiary, county jail or other institution for retention of any person convicted or accused of crime, while engaged in the discharge of official duties, or to any public official engaged in the enforcement of law; nor to any person or association possessing a machine gun not usable as a weapon and possessed as a curiosity, ornament or keepsake; when such officers and persons and associations so excepted shall make and file with the Bureau of Criminal Apprehension of this state within 30 days after the passage of this Act, a written report showing the name and address of such person or association and the official title and position of such officers . . .

§ 3. Machine guns prohibited. Any person who shall own, control, use, possess, sell or transport a machine gun, as herein defined, in violation of this Act, shall be guilty of a felony.

### **MISSOURI:**

1929 Mo. Laws 170, Crimes and Punishment, Prohibiting the Sale, Delivery, Transportation, Possession, or Control of Machine Rifles, Machine Guns and Sub-machine Guns, and Providing Penalty for Violation of Law, §§ 1-2.

§ 1. Unlawful to sell, deliver, transport or have in possession any machine gun. – It shall be unlawful for any person to sell, deliver, transport, or have in actual possession or control any machine gun, or assist in, or cause the same to be done. Any person who violates this act shall be guilty of a felony and punished by imprisonment in the state penitentiary not less than two (2) nor more than thirty (30) years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment. Provided, that nothing in this act shall prohibit the sale, delivery, or transportation to police departments or members thereof, sheriffs, city marshals or the military or naval forces of this state or of the United States, or the possession and transportation of such machine guns, for official use by the above named officers and military and naval forces in the discharge of their duties.

§ 2. The term “machine-gun” defined – The term “machine gun” as used in this act shall be construed to apply to and include all firearms known as machine rifles, machine guns or sub-machine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

### **NEBRASKA:**

1929 Neb. Laws 674, An Act Prohibiting the Sale, Possession and Transportation of Machine Guns within the State of Nebraska; and Prescribing Penalties for the Violation of the Provisions Hereof, ch. 190, §§ 1-2.

§ 1. Machine Guns – Sale Unlawful – Penalty – It shall be unlawful for any person, firm or corporation, its or their agents or servants, to sell or cause to be sold or otherwise to dispose of any machine gun to any person in the State of Nebraska, except officers of the law, agents of the United States government, or agents of the law enforcement department of the State of Nebraska. If any person, firm or corporation, or its or their agents or servants violate any of the provisions of this section, they shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not less than one thousand dollars nor more than ten thousand dollars.

§ 2. U.S. Army and National Guard Exempt – It shall be unlawful for any person or persons, except officers of the law, soldiers of the United States Army, or officers and enlisted men of the National Guard of this state, to transport any machine gun on any highway within this state, or to have in possession for any unlawful purpose any machine gun. Any person violating any of the provisions of this section shall be deemed guilty of a felony and upon conviction thereof, shall be imprisoned in the state penitentiary for not less than one year nor more than ten years.

### **NEW JERSEY:**

1920 N.J. Laws 67, An Act to Amend an Act Entitled, “An Act for the Protection of Certain Kinds of Birds, Game and Fish, to Regulate Their Method of Capture, and Provide Open and Close Seasons for Such Capture and Possession,” ch. 31, § 9.

It shall be unlawful to use in hunting fowl or animals of any kind any shotgun or rifle holding more than two cartridges at one time, or that may be fired more than twice without reloading, or to use any silencer on any gun rifle or firearm when hunting for game or fowl under a penalty of twenty dollars for each offense.

1927 N.J. Laws 742, A Further Supplement to an Act Entitled, “An Act for the Punishment of Crimes,” ch. 321, § 1.

No pawnbroker shall hereafter sell or have in his possession for sale or to loan or give away, any machine gun, automatic rifle, revolver, pistol, or other firearm, or other instrument of any kind known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife, stiletto, bomb or other high explosive. Any pawnbroker violating the provisions of this act shall be guilty of a high misdemeanor and punished accordingly.

1927 N.J. Laws 180-81, A Supplement to an Act Entitled “An Act for the Punishment of Crimes,” ch. 95, §§ 1-2.

§ 1. The term “machine gun or automatic rifle,” as used in this act, shall be construed to mean any weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the said weapon, mechanism or instrument and fired therefrom at a rate of five or more shots to the second.

§ 2. Any person who shall sell, give, loan, furnish or deliver any machine gun or automatic rifle to another person, or any person who shall purchase, have or possess any machine gun or automatic rifle, shall be guilty of a high misdemeanor; provided, the provisions of this section shall not apply to any person who has procured and possesses a license to purchase, have and possess a machine gun or automatic rifle as hereinafter provided for; nor to the authorized agents and servants of such licensee; or to the officers and members of any duly authorized military organization; nor to the officers and members of the police force of any municipality, nor to the officers and members of the State Police force; nor to any sheriff or undersheriff; nor to any prosecutor of the pleas, his assistants, detectives and employees.

1934 N.J. Laws 394-95, A Further Supplement to an Act Entitled “An Act for the Punishment of Crimes,” ch. 155, §§ 1-5.

§ 1. A gangster is hereby declared to be an enemy of the state.

§ 2. Any person in whose possession is found a machine gun or a submachine gun is declared to be a gangster; provided, however, that nothing in this section contained shall be construed to apply to any member of the military or naval forces of this State, or to any police officer of the State or of any county or municipality thereof, while engaged in his official duties.

§ 3. Any person, having no lawful occupation, who is apprehended while carrying a deadly weapon, without a permit so to do and how has been convicted at least

three times of being a disorderly person, or who has been convicted of any crime, in this or in any other State, is declared to be a gangster.

§ 4. Any person, not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime, in this or in any other State, is declared to be a gangster; provided, however, that nothing in this section contained shall in any wise be construed to include any participant or sympathizer in any labor dispute.

§ 5. Any person convicted of being a gangster under the provisions of this act shall be guilty of a high misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars (\$10,000.00), or by imprisonment not exceeding twenty years, or both.

### **NEW YORK:**

1931 N.Y. Laws 1033, An Act to Amend the Penal Law in Relation to Carrying and Use of Glass Pistols, ch. 435, § 1.

A person who attempts to use against another an imitation pistol, or who carries or possesses any instrument or weapon of the kind commonly known as a black-jack, slungshot, billy, sand club, sandbag, metal knuckles, bludgeon, or who, with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, imitation pistol, machine gun, sawed off shot-gun, or any other dangerous or deadly instrument, or weapon is guilty of a misdemeanor, and if he has been previously convicted of any crime he is guilty of a felony.

1933 N.Y. Laws 1639, An Act to Amend the Penal Law, in Relation to the Sale, Possession and Use of Sub-Machine Guns, ch. 805, §§ 1, 3.

§ 1. . . A person who sells or keeps for sale, or offers or gives, disposes of or transports any instrument or weapon of the kind usually known as a machine-gun or a sub-machine gun to any person is guilty of a felony, except that the manufacture of machine-guns and sub-machine guns as merchandise and the sale and shipment thereof direct to regularly constituted or appointed state or municipal police departments, sheriffs, policemen, and other peace officers, and to state prisons, penitentiaries and county jails, and to military and naval organizations shall be lawful.

§ 3. . . . A machine gun is a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun. A person who

possesses or uses such machine-gun is guilty of a felony. The presence of such machine-gun in any room, dwelling, structure, or vehicle shall be presumptive evidence of its illegal possession by all the persons occupying the place where such machine gun is found.

#### **NORTH CAROLINA:**

1917 N.C. Sess. Laws 309, Pub. Local Laws, An Act to Regulate the Hunting of Quail in Harnett County, ch. 209, § 1.

That the open season for hunting quail shall be from the first day of December to the fifteenth day of January following each succeeding year, and that it shall be unlawful to kill quail with any gun or guns that shoot over two times before reloading, and any person violating any of the provisions of this act shall be guilty of a misdemeanor.

#### **NORTH DAKOTA:**

1931 N.D. Laws 305-06, An Act to Prohibit the Possession, Sale and Use of Machine Guns, Sub-Machine Guns, or Automatic Rifles and Defining the Same . . . , ch. 178, §§ 1-2.

§ 1. The term “machine gun, sub-machine gun or automatic rifle” as used in this act shall be construed to mean a weapon mechanism or instrument not requiring the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the said weapon, mechanism or instrument and fired therefrom at a rate of five or more shots to the second.

§ 2. Any person who shall sell, give, loan, furnish or deliver any machine gun, sub-machine gun, automatic rifle of a caliber larger than twenty-two, or a bomb loaded with explosives or poisonous or dangerous gases to another person, or any person who shall purchase, have or possess any machine gun, sub-machine gun, automatic rifle, or a caliber larger than twenty-two or a bomb loaded with explosives or poisonous or dangerous gases, shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary not to exceed ten years, or by a fine of not more than three thousand dollars, or both. Provided, that the provisions of this act shall not apply to any person who has procured and possesses a license to purchase, sell, have or possess a machine gun, sub-machine gun, automatic rifle, of a caliber larger than twenty-two, or bomb loaded with explosives or poisonous or dangerous gases, as hereinafter provided for, nor to the authorized agents and servants of such licensee or to the officers and members of any duly authorized military organization, nor to the officers and members of the police force of any

municipality, nor to any Sheriff, deputy sheriff, nor any other officer having police powers under the laws of the State.

**OHIO:**

1933 Ohio Laws 189-90, Reg. Sess., An Act. . . Relative to the Sale and Possession of Machine Guns, § 1.

That § 12819 of the General Code be supplemented . . . to read as follows:

Definitions. § 12819-3. For the purpose of this act, a machine gun, a light machine gun or a sub-machine gun shall be defined as any firearm which shoots automatically, or any firearm which shoots more than eighteen shots semi-automatically without reloading. Automatically as above used means that class of firearms which, while the trigger on the firearm is held back continues to fire successive shots. Semi-automatically means that class of firearm which discharges one shot only each time the trigger is pulled, no manual reloading operation being necessary between shots. Machine gun permit; application; bond or applicant; exceptions. § 12819-4. No person shall own, possess, transport, have custody of or use a machine gun, light machine gun or sub-machine gun, unless he first procures a permit therefor from and at the direction of the adjutant general of Ohio, who shall keep a complete record of each permit so issued. A separate permit shall be obtained for each gun so owned, possessed or used. The adjutant general shall require each applicant for such permit to give an accurate description of such weapon, the name of the person from whom it was or is to be obtained, the name of the person or persons to have custody thereof and the place of residence of the applicant and custodian. Before obtaining such permit each applicant shall give bond to the state of Ohio, to be approved by the adjutant general in the sum of five thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapon while under the control of such applicant or under the control of another with his consent; and any person injured by such improper use may have recourse on said bond. Provided, however, that this section shall not affect the right of the national guard of Ohio, sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, wardens and guards of penitentiaries, jails, prisons, penal institutions or financial institutions maintaining their own police force and such special officers as are now or may be hereafter authorized by law to possess and use such weapons when on duty. Any person who owns, possesses or has custody of a machine gun, light machine gun or sub-machine gun at the time when this section shall become effective, shall have thirty days thereafter in which to comply with the provisions of this section. Penalty for possession, transportation, etc., without permit. § 12819-5. Whoever owns, possesses, transports or has custody of or uses a machine



gun, light machine gun or sub-machine gun without a permit, as provided by section 12819-4 of the General Code, or whoever having such permit, uses or consents to the use by another of such weapon in an unlawful manner, shall be guilty of a felony and upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years. [War trophies excepted].

### **OREGON:**

1933 Or. Laws 489, An Act to Amend Sections 72-201, 72-202, 72-207, Oregon Code 1930, ch. 315, §§ 3-4.

§ 3. Except as otherwise provided in this act, it shall be unlawful for any person within this state to possess or have in his possession any machine gun . . .

§ 4. The unlawful concealed carrying upon the person or within the vehicle of the carrier of any machine gun, pistol, revolver or other firearm capable of being concealed upon the person is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are hereby declared to be nuisances, and shall be surrendered to the magistrate before whom said person shall be taken . . .

1933 Or. Laws 488, An Act to Amend Sections 72-201, 72-202, 72-207, Oregon Code 1930, § 2.

On and after the date upon which this act takes effect no unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or the state of Oregon or of any political subdivision thereof shall own or have in his possession or under his custody or control any pistol, revolver, or other firearms capable of being concealed upon the person, or machine gun. The terms “pistol,” “revolver,” and “firearms capable of being concealed upon the person” as used in this acts shall be construed to apply to and include all firearms having a barrel less than 12 inches in length. The word “machine gun” shall be construed to be a weapon of any description by whatever name known, loaded or unloaded, from which two or more shots may be fired by a single pressure upon the trigger device. Any person who shall violate the provisions of this section shall be guilty of a felony and, upon conviction thereof, be punishable by imprisonment in the state penitentiary for not less than one nor more than five years.



**PENNSYLVANIA:**

1929 Pa. Laws 777, An Act prohibiting the sale, giving away, transfer, purchasing, owning, possession and use of machine guns: §§1-4

§ 1. Be it enacted, etc., That the term “machine gun” as used in this act, shall mean any firearm that fires two or more shots consecutively at a single function of the trigger or firing device.

§ 2. It shall be unlawful for any person, copartnership, association or corporation to sell, or give, or transfer, any machine gun to any person, copartnership, association or corporation within this Commonwealth; and it shall be unlawful for any person, copartnership, association, or corporation to purchase, own or have in possession any machine gun. Any person violating any of the provisions of this section shall be guilty of a felony, and, on conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars, and undergo imprisonment by separate or solitary confinement at labor not exceeding five years.

§ 3. Any person who shall commit, or attempt to commit, any crime within this Commonwealth, when armed with a machine gun, shall, upon conviction of such crime or attempt to commit such crime, in addition to the punishment for the crime for which he has been convicted, be sentenced to separate and solitary confinement at labor for a term not exceeding ten years. Such additional penalty of imprisonment shall commence upon the expiration or termination of the sentence imposed for the crime of which he stands convicted, and shall not run concurrently with such sentence.

§ 4. Nothing contained in this act shall prohibit the manufacture for, and sale of, machine guns to the military forces of the United States, or of the Commonwealth of Pennsylvania, or to any police department of this Commonwealth, or of any political subdivision thereof, nor to the purchase or possession of machine guns by such governments and departments; and nothing contained in this act shall prohibit any organization, branch, camp or post of veterans, or any veteran of any war in which the United States was engaged, from owning and possessing a machine gun as a relic, if a permit for such ownership or possession has been obtained from the sheriff of the county, which permit is at all times attached to such machine gun. The sheriffs of the several counties are hereby authorized, upon application and the payment of a fee of one dollar, to issue permits for the ownership and possession of machine guns by veteran and organizations, branches, camps or posts of veterans and organizations, branches, camps or posts of veterans, upon production to the sheriff of such evidence as he may require that the organization, branch, camp or post is a bona fide organization of veterans, or that any such veteran

applicant is a veteran of good moral character and reputation, and that the ownership and possession of such machine gun is actually desired as a relic.

1929 Pa. Laws 777, An Act prohibiting the sale, giving away, transfer, purchasing, owning, possession and use of machine guns: § 3.

§ 3. Any person who shall commit, or attempt to commit, any crime within this Commonwealth, when armed with a machine gun, shall upon conviction of such crime or attempt to commit such crime, in addition to the punishment for the crime for which he has been convicted, be sentenced to separate and solitary confinement at labor for a term not exceeding ten years. Such additional penalty of imprisonment shall commence upon the expiration or termination of the sentence imposed for the crime of which he stands convicted, and shall not run concurrently with such sentence.

### **RHODE ISLAND:**

1927 R.I. Pub. Laws 256, An Act to Regulate the Possession of Firearms: §§ 1, 12.

§ 1. When used in this act the following words and phrases shall be construed as follows: “pistol” shall include any pistol or revolver, and any shot gun, rifle or similar weapon with overall less than twenty-six inches, but shall not include any pistol without a magazine or any pistol or revolver designed for the use of blank cartridges only. “machine gun” shall include any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without reloading. “Firearm shall include any machine gun or pistol. . . “crime of violence” shall mean and include any of the following crimes or any attempt to commit any of the same, viz. murder, manslaughter, rape, mayhem, assault or battery involving grave bodily injury, robbery, burglary, and breaking and entering. “sell” shall include let or hire, give, lend and transfer, and the word “purchase” shall include hire, accept and borrow, and the expression “purchasing” shall be construed accordingly. . .

§ 12. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer’s number, or other mark of identification on any firearm. Possession of any firearm upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

1927 (January Session) R.I. Pub. Laws 256, An Act to Regulate the Possession of Firearms: §§ 1, 4, 5, 6

§ 1. When used in this act the following words and phrases shall be construed as follows: “Pistol” shall include any pistol or revolver, and any shot gun, rifle or

similar weapon with overall less than twenty-six inches, but shall not include any pistol without a magazine or any pistol or revolver designed for the use of blank cartridges only. "machine gun" shall include any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without reloading. "Firearm shall include any machine gun or pistol. . . "Crime of violence" shall mean and include any of the following crimes or any attempt to commit any of the same, viz.: murder, manslaughter, rape, mayhem, assault or battery involving grave bodily injury, robbery, burglary, and breaking and entering. "Sell" shall include let or hire, give, lend and transfer, and the word "purchase" shall include hire, accept and borrow, and the expression "purchasing" shall be construed accordingly. . .

§ 4. No person shall, without a license therefor, issued as provided in section six hereof, carry a pistol in any vehicle or concealed on or about his person, except in his dwelling house or place of business or on land possessed by him, and no person shall manufacture, sell, purchase or possess a machine gun except as otherwise provided in this act.

§ 5. The provisions of section four shall not apply to sheriffs, deputy sheriffs, the superintendent and members of the state police, prison or jail wardens or their deputies, members of the city or town police force or other duly appointed law enforcement officers, nor to members of the army, navy or marine corps of the United States, or of the national guard, when on duty, or of organizations by law authorized to purchase or receive firearms from the United States or this state, nor to officers or employees of the United States authorized by law to carry a concealed firearm, nor to duly authorized military organizations when on duty, nor to members thereof when at or going to or from their customary places of assembly, nor to the regular and ordinary transportation of pistols as merchandise, nor to any person while carrying a pistol unloaded in a wrapper from the place of purchase to his home or place of business, or to a place of repair or back to his home or place of business, or in moving goods from one place or abode or business to another.

§ 6. The licensing authorities of any city or town shall upon application of any person having a bona fide residence or place of business within such city or town, or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his person issued by the authorities of any other state or subdivision of the United States, issue a license to such person to carry concealed upon his person a pistol within this state for not more than one years from date of issue, if it appears the applicant has good reason to fear an injury to his person or property or has any other proper reason for carrying a pistol, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the attorney-general and shall bear the

fingerpring, name, address, description and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the attorney-general and the triplicate shall be preserved for six years by the licensing authorities issuing said license. A fee of two dollars may be charged and shall be paid for each license, to the officer issuing the same. Before issuing any such permit the applicant for the same shall be required to give bond to the city or town treasurer in the penal sum of three hundred dollars, with surety satisfactory to the authority issuing such permit, to keep the peace and be of good behavior. Every such permit shall be valid for one year from the date when issued unless sooner revoked. The fee charged for the issuing of such license or permit shall be applied in accordance with the provisions of section thirty-three of chapter 401 of the general laws.

1927 R. I. Pub. Laws 256, An Act to Regulate the Possession of Firearms: §§ 1, 4, 7, 8.

§ 1. When used in this act the following words and phrases shall be construed as follows: "Pistol" shall include any pistol or revolver, and any shot gun, rifle or similar weapon with overall less than twenty-six inches, but shall not include any pistol without a magazine or any pistol or revolver designed for the use of blank cartridges only. "Machine gun" shall include any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without reloading. "Firearm shall include any machine gun or pistol. . . "Crime of violence" shall mean and include any of the following crimes or an attempt to commit any of the same, viz.: murder, manslaughter, rape, mayhem, assault or battery involving grave bodily injury, robbery, burglary, and breaking and entering. "Sell" shall include let or hire, give, lend and transfer, and the word "purchase" shall include hire, accept and borrow, and the expression "purchasing" shall be construed accordingly. . .

§ 4. No person shall, without a license therefor, issued as provided in section six hereof, carry a pistol in any vehicle or concealed on or about his person, except in his dwelling house or place of business or on land possessed by him, and no person shall manufacture, sell, purchase or possess a machine gun except as otherwise provided in this act.

§ 7. The attorney-general may issue a permit to any banking institution doing business in this state or to any public carrier who is engaged in the business of transporting mail, money, securities or other valuables, to possess and use machine guns under such regulations as the attorney general may prescribe.

§ 8. It shall be unlawful within this state to manufacture, sell, purchase or possess except for military or police purposes, any muffler, silencer or device for deadening or muffling the sound of a firearm when discharged.

1927 R.I. Pub. Laws 256, An Act to Regulate the Possession of Firearms, §§1, 3  
 § 1. When used in this act the following words and phrases shall be construed as follows: “pistol” shall include any Pistol or revolver, and any shot gun, rifle or similar weapon with overall less than twenty-six inches, but shall not include any pistol without a magazine or any pistol or revolver designed for the use of blank cartridges only. “machine gun” shall include any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without reloading. “Firearm shall include any machine gun or pistol. . . “Crime of violence” shall mean and include any of the following crimes or any attempt to commit any of the same, viz.: murder, manslaughter, rape, mayhem, assault or battery involving grave bodily injury, robbery, burglary, and breaking and entering. “sell” shall include let or hire, give, lend and transfer, and the word “purchase” shall include hire, accept and borrow, and the expression “purchasing” shall be construed accordingly. . .  
 § 3. No person who has been convicted in this state or elsewhere of a crime of violence shall purchase own, carry or have in his possession or under his control any firearm.

### **SOUTH CAROLINA:**

1934 S.C. Acts 1288, An Act regulating the use and possession of Machine Guns: §§ 1 to 6.

§ 1. “Machine gun” defined. – Be it enacted by the General Assembly of the State of South Carolina: For the purposes of this Act the word “machine gun” applies to and includes all firearms commonly known as machine rifles, machine guns and sub-machine guns of any caliber whatsoever, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to such gun from or by means of clips, disks, belts or other separable mechanical device.

§ 2. Transportation of Machine Gun. – It shall be unlawful for any person or persons in any manner to transport from one place to another in this State, or from any railroad company, or express company, or other common carrier, or any officer, agent or employee of any of them, or any other person acting in their behalf knowingly to ship or to transport from one place to another in this State in any manner or by any means whatsoever, except as hereinafter provided, any firearm as described hereinabove or commonly known as a machine gun.

§ 3. Storing, Keeping, and/or Possessing Machine Gun. – It shall be unlawful for any person to store, keep, possess, or have in possession, or permit another to store,

keep, possess, or have in possession, except as hereinafter provided, any firearm of the type defined above or commonly known as a machine gun.

§ 4. Selling, Renting or Giving away Machine Gun. – It shall be unlawful for any person to sell, rent, or give away, or be interested directly or indirectly, in the sale, renting or giving away, or otherwise disposing of any firearm of the type above described or commonly known as a machine gun.

§ 5. Exceptions – Register Machine Guns. – The provisions of this Act shall not apply to the army, navy or marine corps of the United States, the National Guard, and organizations authorized by law to purchase or received machine guns from the United States, or from this State, and the members of such corps. National Guard and organizations while on duty or at drill, may possess, carry and transport machine guns, and, Provided, further, That any peace officer of the State, counties or political sub-division thereof. State Constable, member of the Highway patrol, railway policemen, warden, superintendents, headkeeper or deputy of any State prison, penitentiary, workhouse, county jail, city jail, or other institution for detention of persons convicted or accused of crime, or held as witnesses in criminal cases, or persons on duty in the postal service of the United States, or common carrier while transporting direct to any police department, military or naval organization, or persons authorized by law to possess or use a machine gun, may possess machine guns when required in the performance of their duties, nor shall the provisions of this Act be construed to apply to machine guns kept for display as relics and which are rendered harmless and not useable. Within thirty days after the passage of this Act every person permitted by this Act to possess a machine gun or immediately after any person is elected to or appointed to any office or position which entitles such person to possess a machine gun, shall file on the office of the Secretary of State on a blank to be supplied by the Secretary of State on application therefor, an application to be properly sworn to, which shall be approved by the Sheriff of the county in which the applicant resides or has its principal place of business, which shall include the applicants name, residence and business address, description including sex, race, age weight, height, color of eyes, color of hair, whether or not ever charged or convicted of any crime, municipal, State or otherwise, and where, if so charged, and when same was disposed of. The applicant shall also give the description including the serial number and make the machine gun which he possesses or desires to possess. Thereupon the Secretary of State shall file such application in his office, registering such applicant together with the information required in the application in a book or index to be kept for that purpose, and assign to him a number, and issue to him a card which shall bear the signature of the applicant, and which he shall keep with him while he has such machine gun in his possession. Such registration shall be made on the date



application is received and filed with the Secretary of State, and shall expire on December 31, of the year in which said license is issued.

§ 6. Penalty – Any person violating any of the provisions of this Act shall be guilty of a felony, and, on conviction thereof shall be sentenced to pay a fine not exceeding One Thousand Dollars, and undergo imprisonment by separate or solitary confinement at labor not exceeding twenty (20) years.

### **SOUTH DAKOTA:**

1933 S.D. Sess. Laws 245-47, An Act Relating to Machine Guns, and to Make Uniform the Law with Reference Thereto, ch. 206, §§ 1-8.

§ 1. “machine gun” applies to and includes a weapon of any description by whatever name known, loaded or unloaded from which more than five shots or bullets may be rapidly or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device. “Crime of Violence” applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering, and larceny. “Person” applied to and includes firm, partnership, association or corporation.

§ 2. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not more than twenty years.

§ 3. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not more than fifteen years.

§ 4. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose; (a) When the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found; or (b) when in the possession of, or used by, an unnaturalized foreign born person, who has been convicted of a crime of violence in any court of record, state or federal of the United States of America, its territories or insular possessions; or (c) when the machine gun is of the kind described in §8 and has not been registered as in said section required; or (d) when empty or loaded pistol shells of 30 or larger caliber which have been or are susceptible or use in the machine gun are found in the immediate vicinity thereof.

§ 5. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

§ 6. Exceptions. Nothing contained in this act shall prohibit or interfere with (1.) the manufacture for, and sale of, machine guns to the military forces or the peace



officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; (2.) The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; (3.) The possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber, for a purpose manifestly not aggressive or offensive.

§ 7. Every manufacturer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provisions of this section shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail, nfor not exceeding six months or by both such fine and imprisonment.

§ 8. Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered in the office of the Secretary of State, on the effective date of this act, and annually thereafter. If acquired hereafter it shall be registered within 24 hours after its acquisition. Blanks for registration shall be prepared by the Secretary of State, and furnished upon application. To comply with this section the application as filed must show the model and serial number of the gun, the name, address and occupation of the person in possession, ande from whom and the purpose for which, the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive and aggressive purpose.

### **TEXAS:**

1933 Tex. Gen. Laws 219-20, 1st Called Sess., An Act Defining “Machine Gun” and “Person”; Making It an Offense to Possess or Use Machine Guns. . . , ch. 82, §§ 1-4, 6

§ 1. Definition. “Machine gun” applies to and includes a weapon of any description by whatever name known, loaded or unloaded, from which more than five (5) shots or bullets may be automatically discharged from a magazine by a single functioning of the firing device. “Person” applies to and includes firm, partnership, association or corporation.

§ 2. Whosoever shall possess or use a machine gun, as defined in Section 1, shall be guilty of a felony and upon conviction thereof, shall be confined in the State Penitentiary, for not less than two nor more than ten (10) years.

§ 3. Whoever shall sell, lease, give, barter, exchange, or trade, or cause to be sold, leased, given, bartered, exchanged, or traded, a machine gun as hereinabove defined to any person shall be guilty of a felony and upon conviction thereof, shall be confined to the State Penitentiary, for not less than two (2) nor more than (10) years.

§ 4. [Excludes military, police, unusable keepsakes, prison officers.]

§ 6. The fact that there are many gangsters purchasing machine guns in Texas, causing a menace to the citizenry of Texas, creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

#### **VERMONT:**

1923 Vt. Acts and Resolves 127, An Act to Prohibit the Use of Machine Guns and Automatic Rifles in Hunting, § 1.

A person engaged in hunting for game who uses, carries, or has in his possession a machine gun of any kind or description, or an automatic rifle of military type with a magazine capacity of over six cartridges, shall be fined not more than five hundred dollars nor less than fifty dollars. The presence of such a firearm in a hunting camp shall be presumptive evidence that the possessor of such a firearm has violated the provisions of this section.

#### **VIRGINIA:**

1934 Va. Acts 137-39, An Act to define the term “machine gun”; to declare the use and possession of a machine gun for certain purposes a crime and to prescribe the punishment therefor, ch. 96, §§ 1-7.

§ 1. Where used in this act; (a) “Machine gun” applies to and includes a weapon of any description by whatever name known, loaded or unloaded, from which more than seven shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device, and also applies to and includes weapons, loaded or unloaded, from which more than sixteen shots or bullets may be rapidly, automatically, semi-automatically or otherwise discharged without reloading. (b) “Crime of violence” applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, . . .

§ 2. Possession or use of machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by death or by imprisonment in the State penitentiary for a term not less than twenty years.

§ 3. Unlawful possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the State penitentiary for a term of not less than ten years.

§ 4. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose; (a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or (b) When in the possession of, or used by, an unnaturalized foreign born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or (c) When the machine gun is of the kind described in section eight and has not been registered as in said section required; or (d) When empty or loaded pistol shells of thirty (thirty one-hundredths inch or seven and sixty-three one hundredths millimeter ) or larger caliber which have been or are susceptible to use in the machine gun are found in the immediate vicinity thereof.

§ 5. The presence of a machine gun in any room, boat, or vehicle shall be prima facie evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

§ 6. (excludes military police etc. )

§ 7. Every manufacturer or dealer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold. . .

### **WASHINGTON:**

1933 Wash. Sess. Laws 335-36, An Act Relating to Machine Guns, Regulating the Manufacture, Possession, Sale of Machine Guns and Parts, and Providing Penalty for the Violation Thereof, and Declaring an Emergency, ch. 64, §§ 1-5.

§ 1. That it shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun: provided, however, that such limitation shall not apply to any peace officer in the discharge

of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

§ 2. For the purpose of this act a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

§ 3. Any person violating any of the provisions of this act shall be guilty of a felony.

§ 4. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all peace officers, and/or any officer or member of the armed forces of the United States or the State of Washington to seize said machine gun, or parts thereof, wherever and whenever found.

§ 5. This act is necessary for the immediate preservation of public health and safety, and shall take effect immediately.

#### **WEST VIRGINIA:**

1925 W.Va. Acts 31-32, 1st Extraordinary Sess., An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace . . . , ch. 3, § 7, pt. b. It shall be unlawful for any person, firm or corporation to place or keep on public display to passersby on the streets, for rent or sale, any revolver, pistol, dirk, bowie knife, slung shot or other dangerous weapon of like kind or character or any machine gun, sub-machine gun or high powered rifle or any gun of similar kind or character, or any ammunition for the same. All dealers licensed to sell any of the forgoing arms or weapons shall take the name, address, age and general appearance of the purchaser, as well as the maker of the gun, manufacturer's serial number and caliber, and report the same at once in writing to the superintendent of the department of public safety. It shall be unlawful for any person to sell, rent, give or lend any of the above mentioned arms to an unnaturalized person.

1925 W.Va. Acts 30-31, 1st Extraordinary Sess., An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace; Providing for the Granting and Revoking of Licenses and Permits Respecting the Use, Transportation and Possession of Weapons and Fire Arms . . . , ch. 3, § 7, pt. b. (b) It shall be unlawful for any person to carry, transport, or have in his possession any machine gun, sub-machine gun, and what is commonly known as a high

powered rifle, or any gun of a similar kind or character, or any ammunition therefor, except on his own premises or premises leased to him for a fixed term, until such person shall have first obtained a permit from the superintendent of the department of public safety of this state, and approved by the governor, or until a license therefore shall have been obtained from the circuit court as in the case of pistols and all such licenses together with the numbers identifying such rifle shall be certified to the superintendent of the department of public safety. Provided, further, that nothing herein shall prevent the use of rifles by bona fide rifle club members who are freeholders or tenants for a fixed term in this state at their usual or customary place of practice, or licensed hunters in the actual hunting of game animals. No such permit shall be granted by such superintendent except in cases of riot, public danger, and emergency, until such applicant shall have filed his written application with said superintendent of the department of public safety, in accordance with such rules and regulations as may from time to time be prescribed by such department of public safety relative thereto, which application shall be accompanied by a fee of two dollars to be used in defraying the expense of issuing such permit and said application shall contain the same provisions as are required to be shown under the provisions of this act by applicants for pistol licenses, and shall be duly verified by such applicant, and at least one other reputable citizen of this state. Any such permit as granted under the provisions of this act may be revoked by the governor at his pleasure upon the revocation of any such permit the department of public safety shall immediately seize and take possession of any such machine gun, sub-machine gun, high powered rifle, or gun of similar kind and character, held by reason of said permit, and any and all ammunition therefor, and the said department of public safety shall also confiscate any such machine gun, sub-machine gun and what is commonly known as a high powered rifle, or any gun of similar kind and character and any and all ammunition therefor so owned, carried, transported or possessed contrary to the provisions of this act, and shall safely store and keep the same, subject to the order of the governor.

### **WISCONSIN:**

1928-1929 Wis. Sess. Laws 157, An Act to Create . . . the Statutes, Relating to Machine Guns and Providing a Penalty, ch. 132, § 1.

Any person who shall own, use or have in his possession a machine gun shall be punished by imprisonment in the state prison for a term the minimum of which shall be one year and the maximum fifteen years. Nothing in this section shall be construed as prohibiting police officers, national guardsmen, sheriffs and their deputies from owning, using or having in their possession a machine gun while actually engaged in the performance of their lawful duties; nor shall any person or

organization be prohibited from possessing any machine gun received from the government as a war trophy.

1931-1933 Wis. Sess. Laws 245-47, An Act . . . Relating to Machine Guns and to Make Uniform the Law with Reference Thereto, ch. 76, § 1, pt. 164.01 to 164.06. 164.01 Definitions (a) “Machine gun” applies to and includes a weapon of any description by whatever name known from which more than two shots or bullets may be discharged by a single function of the firing device. . .

164.02 Use of Machine Gun is a Separate Crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than twenty years.

164.03 Possession for Aggressive Purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term not less than ten years.

164.04 Possession when Presumed For Aggressive Purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose; (1) when the machine gun is on premises not owned or rented, for a bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or (2) when in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or (3) When the machine gun is of the kind described in section 164.08 and has not been registered as in said section required; or (4) When empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been used or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

164.05 Presumptions from Presence of Gun. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

164.06 Exceptions. Nothing contained in this chapter shall prohibit or interfere with the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; the possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger



caliber, for a purpose manifestly not aggressive or offensive. . . [manufacturers and owners required to register].

1931-1933 Wis. Sess. Laws 778, An Act . . . Relating to the Sale, Possession, Transportation and Use of Machine Guns and Other Weapons in Certain Cases, and Providing a Penalty, ch. 359, § 1.

No person shall sell, possess, use or transport any machine gun or other full automatic firearm, nor shall any person sell, possess, use or transport any bomb, hand grenade, projectile, shell or other container of any kind or character into which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property. (2) Any person violating any of the provisions of this section shall be punished by imprisonment in the state prison for a term of not less than one year nor more than three years. (3) [doesn't apply to police, military etc.].

### **WYOMING:**

1933 Wyo. Sess. Laws 117, An Act Relating to the Registering and Recording of Certain Facts Concerning the Possession and Sale of Firearms by all Wholesalers, Retailers, Pawn Brokers, Dealers and Purchasers, Providing for the Inspection of Such Register, Making the Violation of the Provisions Hereof a Misdemeanor, and Providing a Penalty Therefor, ch. 101, §§ 1-4.

§ 1. All wholesalers, retailers, dealers and pawn brokers are hereby required to keep a record of all firearms which may come into their possession, whether new or second hand, which record shall be known as the Firearms Register. Such register shall contain the following information, to wit: the name of the manufacturer, person, persons, firm or corporation from whom the firearm was obtained, the date of its acquisition, its manufacturer's number, its color, its caliber, whether the same is new or second hand, whether it is automatic, a revolver, a single shot pistol, a rifle, a shot gun or a machine gun, the name of the party to whom said firearm is sold in such purchasers handwriting and the date of such sale.

§ 2. Every person who purchases any firearm from any retailer, pawn broker or dealer, shall sign his name or make his mark properly witnessed, if he cannot write, on said Firearm Register, at the time of the delivery to him of any firearm so purchased.

§ 3. The firearm register, herein required to be kept, shall be prepared by every wholesaler, retailer, pawn broker and dealer in firearms in the state of Wyoming within 30 days after this Act shall become effective and shall thereafter be continued as herein provided. It shall be kept at the place of business of said



wholesaler, retailer, pawn broker or dealer, and shall be subject to inspection by any peace officer at all reasonable times.

§ 4. Any person, firm or corporation who shall fail or refuse to comply with the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed \$100.00, or imprisoned in the County Jail for a period of not to exceed six months, or by both such fine and imprisonment.

SOURCE: <https://firearmslaw.duke.edu/repository/search-the-repository/>

## **EXHIBIT E**

## EXHIBIT E

### DANGEROUS WEAPONS LAWS<sup>1</sup>

#### ALABAMA

1837 Ala. Acts 7, An Act to Suppress the Use of Bowie Knives, §§ 1, 2.

Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That if any person carrying any knife or weapon, known as Bowie Knives or Arkansasaw [sic] Tooth-picks, or either or any knife or weapon that shall in form, shape or size, resemble a Bowie-Knife or Arkansasaw [sic] Tooth-pick, on a sudden rencounter, shall cut or stab another with such knife, by reason of which he dies, it shall be adjudged murder, and the offender shall suffer the same as if the killing had been by malice aforethought.

And be it further enacted, [t]hat for every such weapon, sold or given, or otherwise disposed of in this State, the person selling, giving or disposing of the same, shall pay a tax of one hundred dollars, to be paid into the county Treasury; and if any person so selling, giving or disposing of such weapon, shall fail to give in the same to his list of taxable property, he shall be subject to the pains and penalties of perjury.

1839 Ala. Acts 67, An Act to Suppress the Evil Practice of Carrying Weapons Secretly, § 1

That if any person shall carry concealed about his person any species of fire arms, or any bowie knife, Arkansas tooth-pick, or any other knife of the like kind, dirk, or any other deadly weapon, the person so offending shall, on conviction thereof, before any court having competent jurisdiction, pay a fine not less than fifty, nor more than five hundred dollars, to be assessed by the jury trying the case; and be imprisoned for a term not exceeding three months, at the discretion of the Judge of said court.

1841 Ala. Acts 148–49, Of Miscellaneous Offences, ch. 7, § 4.

Everyone who shall hereafter carry concealed about his person, a bowie knife, or knife or instrument of the like kind or description, by whatever name called, dirk or any other deadly weapon, pistol or any species of firearms, or air gun, unless such person shall be threatened with, or have good cause to apprehend an attack, or be travelling, or setting out on a journey, shall on conviction, be fined not less than fifty nor more than three hundred dollars: It shall devolve on the person setting up

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<sup>1</sup> Further research may yield additional laws regulating firearm hardware.

the excuse here allowed for carrying concealed weapons, to make it out by proof, to the satisfaction of the jury; but no excuse shall be sufficient to authorize the carrying of an air gun, bowie knife, or knife of the like kind or description.

The Revised Code of Alabama Page 169, Image 185 (1867) available at The Making of Modern Law: Primary Sources.

Taxation, § 10. On All pistols or revolvers in the possession of private persons not regular dealers holding them for sale, a tax of two dollars each; and on all bowie knives, or knives of the like description, held by persons not regular dealers, as aforesaid, a tax of three dollars each; and such tax must be collected by the assessor when assessing the same, on which a special receipt shall be given to the tax payer therefor, showing that such tax has been paid for the year, and in default of such payment when demanded by the assessor, such pistols, revolvers, bowie knives, or knives of like description, must be seized by him, and unless redeemed by payment in ten days thereafter, with such tax, with an additional penalty of fifty per cent., the same must be sold at public outcry before the court house door, after five days notice; and the overplus remaining, if any, after deducting the tax and penalty aforesaid, must be paid over to the person from whom the said pistol, revolver, bowie knife, or knife of like description, was taken, and the net amount collected by him must be paid over to the collector every month, from which, for each such assessment and collection, the assessor shall be entitled to fifty cents, and when the additional penalty is collected, he shall receive fifty per cent. additional thereto.

Wade Keyes, The Code of Alabama, 1876 : with References to the Decisions of the Supreme Court of the State upon the Construction of the Statutes; and in Which the General and Permanent Acts of the Session of 1876-7 have been Incorporated Page 882, Image 898 (1877) available at The Making of Modern Law: Primary Sources.

Offenses Against Public Peace, § 4109. Carrying Concealed Weapons – Any person who, not being threatened with, or having good reason to apprehend, an attack, or traveling, or setting out on a journey, carries concealed about his person a bowie knife, or any other knife or instrument of like kind or description, or a pistol, or fire arms of any other kind or description, or an air gun, must be fined, on conviction, not less than fifty, nor more than three hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Footnote – Not unconstitutional. – 1 Ala. 612 Co-extensive only with necessity – 49 Ala. 355. . .)

Wade Keyes, The Code of Alabama, 1876 : with References to the Decisions of the Supreme Court of the State upon the Construction of the Statutes; and in Which the General and Permanent Acts of the Session of 1876-7 have been Incorporated Page 989, Image 1005 (1877) available at The Making of Modern Law: Primary Sources.

Proceedings In Circuit and City Courts, § 4809. Carrying Concealed Weapons. – In an indictment for carrying concealed weapons, it is sufficient to charge that the defendant “carried concealed about his person a pistol, or other description of fire-arms,” or “a bowie-knife, or other knife or instrument of the like kind or description,” without averring the want of a legal excuse on his part; and the excuse, if any, must be proved by the defendant, on the trial, to the satisfaction of the jury.

Wade Keyes, The Code of Alabama, 1876 : with References to the Decisions of the Supreme Court of the State upon the Construction of the Statutes; and in Which the General and Permanent Acts of the Session of 1876-7 have been Incorporated Page 901, Image 917 (1877) available at The Making of Modern Law: Primary Sources.

Offenses Against Public Health, etc. § 4230 (3751). Selling, giving, or lending, pistol or bowie knife, or like knife, to boy under eighteen. – Any person who sells, gives, or lends, to any boy under eighteen years of age, any pistol, or bowie knife, or other knife of like kind or description, must on conviction, be fined not less than fifty, nor more than five hundred dollars.

Wade Keyes, The Code of Alabama, 1876 : with References to the Decisions of the Supreme Court of the State upon the Construction of the Statutes; and in Which the General and Permanent Acts of the Session of 1876-7 have been Incorporated Page 883, Image 899 (1877) available at The Making of Modern Law: Primary Sources.

Carrying Weapons, Dangerous or Unusual Weapons | Alabama | 1873  
Offenses Against Public Justice, &c. § 4110. Carrying, concealed, brass knuckles and slung-shots. – Any person who carries, concealed about his person, brass knuckles, slung-shot, or other weapon of like kind or description, shall, on conviction thereof, be fined not less than twenty, nor more than two hundred dollars, and may also, at the discretion of the court trying the case, be imprisoned in the county jail, or sentenced to hard labor for the county, for a term not exceeding six months. § 4111. Carrying rifle or shot-gun walking canes. – Any person who shall carry a rifle or shot-gun walking cane, shall, upon conviction, be fined not less than five hundred dollars, nor more than one thousand dollars, and be imprisoned in the penitentiary not less than two years.

J. M. Falkner, The Code of Ordinances of the City Council of Montgomery [Alabama], with the Charter Page 148-49, Image 148-49 (1879) available at The Making of Modern Law: Primary Sources.

§ 428. Any person who, not being threatened with or having good reason to apprehend an attack, or travelling or setting out on a journey, carries concealed about his person a bowie-knife or any other knife of like kind or description, or a pistol or fire-arms of any other kind or description, air gun, slung-shot, brass-knuckles, or other deadly or dangerous weapon, must, on conviction, be fined not less than one nor more than one hundred dollars.

William Logan Martin, Commissioner, The Code of Alabama, Adopted by Act of the General Assembly of the State of Alabama, Approved February 16, 1897, Entitled “An Act to Adopt a Code of Laws for the State Alabama ” with Such Statutes Passed at the Session of 1896-97, as are Required to be Incorporated Therein by Act Approved February 17, 1897; and with Citations to the Decisions of the Supreme Court of the State Construing or Mentioning the Statutes Page 1137, Image 1154 (Vol. 1, 1897) available at The Making of Modern Law: Primary Sources.

[License Taxes; From Whom and For What Business Required; Prices; County Levy,] Taxation, § 27. For dealers in pistols, or pistol cartridges, or bowie-knives, or dirk-knives, whether principal stock in trade or not, three hundred dollars. Any cartridges, whether called rifle or pistol cartridges, or by any other name, that can be used in a pistol, shall be deemed pistol cartridges within the meaning of this

subdivision. Any person or firm who orders for another, or delivers any cartridges within this state, shall be deemed a dealer under this provision.

### **ALASKA**

Fred F. Barker, Compilation of the Acts of Congress and Treaties Relating to Alaska: From March 30, 1867, to March 3, 1905 139 1906.

That it shall be unlawful for any person to carry concealed about his person, in any manner whatever, any revolver, pistol, or other firearm, or knife (other than an ordinary pocket knife), or any dirk or dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

1896-99 Alaska Sess. Laws 1270, An Act To Define And Punish Crimes In The District Of Alaska And To Provide A Code Of Criminal Procedure For Said District, chap. 6, § 117.

That it shall be unlawful for any person to carry concealed about his person in any manner whatever, any revolver, pistol, or other firearm, or knife (other than an ordinary pocket knife), or any dirk or dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

### **ARIZONA**

1889 Ariz. Sess. Laws 16, An Act Defining And Punishing Certain Offenses Against The Public Peace, § 1.

If any person within any settlement, town, village or city within this territory shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition thereto, shall forfeit to the County in which his is convicted, the weapon or weapons so carried.

1893 Ariz. Sess. Laws 3, An Act To Regulate And Prohibit The Carrying Of Deadly Weapons Concealed, § 1.

It shall be unlawful for any person to have or carry concealed on or about his person any pistol or other firearm, dirk, dagger, slung-shot, sword cane, spear, brass knuckles, or other knuckles of metal, bowie knife or any kind of knife of



weapon except a pocket-knife not manufactured and used for the purpose of offense and defense.

1901 Arizona 1251-53, Crimes Against the Public Peace, §§ 381, 385, 390.

§ 381. It shall be unlawful for any person (except a peace officer in actual service and discharge of his duty) , to have or carry concealed on or about his person, any pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass knuckles or other knuckles of metal, bowie-knife or any kind of knife or weapon, except a pocket knife, not manufactured and used for the purpose of offense and defense.

§ 385. If any person within any settlement, town, village or city within this territory shall carry on or about his person, saddle, or in saddlebags, any pistol, dagger, slung-shot, sword-cane, spear, brass knuckles, bowie- knife or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition shall forfeit to the county in which he is convicted the weapon or weapons so carried.

§ 390. Persons travelling may be permitted to carry arms within settlements or towns of the territory, for one half hour after arriving in such settlements or towns, and while going out of such towns or settlements; and sheriffs and constables of the various counties of this territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties . . .

1901 Ariz. Acts 1252, Crimes and Punishments, §§ 387, 391.

§ 387. If any person shall go into church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind or into a ball room, social party or social gathering, to any election precinct, on the day or days of any election, where any portion of the people of this territory are collected to vote at any election, or to any other place where people may be assembled to minister, or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung-shot, sword-cane, spear, brass knuckles, bowie knife or any other kind of knife manufactured and sold for the purposes of offense or defense, he shall be punished by a fine not less than fifty or more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person.

§ 391. It shall be the duty of the keeper of each and every hotel, boarding house and drinking saloon, to keep posted in a conspicuous place in his bar room, or reception room . . . a plain notice to travelers to divest themselves of their weapons in accordance with section 382 . . .

## ARKANSAS

Slaves, in Laws of the Arkansas Territory 521 (J. Steele & J. M'Campbell, Eds., 1835).

Race and Slavery Based | Arkansas | 1835

§ 3. No slave or mulatto whatsoever, shall keep or carry a gun, powder, shot, club or other weapon whatsoever, offensive or defensive; but all and every gun weapon and ammunition found in the possession or custody of any negro or mulatto, may be seized by any person and upon due proof made before any justice of the peace of the district [county] where such seizure shall be, shall by his order be forfeited to the seizer, for his own use, and moreover, every such offender shall have and receive by order of such justice any number of lashes not exceeding thirty nine on his or her bare back well laid on for every such offense.

Josiah Gould A Digest of the Statutes of Arkansas All Laws of a General and Permanent Character in Force the Close of the Session of the General Assembly of 380 381–82 (1837).

Every person who shall wear any pistol, dirk, butcher or large knife, or a sword in a cane, concealed as a weapon, unless upon a journey, shall be adjudged guilty of a misdemeanor.

George Eugene Dodge, A Digest of the Laws and Ordinances of the City of Little Rock, with the Constitution of State of Arkansas, General Incorporation Laws, and All Acts of the General Assembly Relating to the City Page 230-231, Image 230-231 (1871) available at The Making of Modern Law: Primary Sources.

Sentence Enhancement for Use of Weapon | Arkansas | 1871

City Ordinances, § 287. Whenever there shall be found upon the person of any one, who has been found guilty of a breach of the peace, or for conduct calculated to provoke a breach of the peace, any pistol, revolver, bowie-knife, dirk, rifle, shot gun, slung-shot, colt, or knuckles of lead, brass or other metal; or when, upon trial, evidence shall be adduced proving that such weapons were in the possession or on the person of any one while in the act or commission of the act aforesaid, such person shall be fined not less than twenty-five nor more than five hundred dollars, in addition to the penalty for the breach of the peace aforesaid.

Act of Feb. 16, 1875, 1874-75 Ark. Acts 156.

§ 1. That any person who shall wear or carry any pistol of any kind whatever, or any dirk, butcher or bowie knife, or a sword or a spear in a cane, brass or metal knucks, or razor, as a weapon, shall be adjudged guilty of a misdemeanor, and

upon conviction thereof, in the county in which said offense shall have been committed, shall be fined in any sum not less than twenty-five nor more than one hundred dollars, to be recovered by presentment or indictment in the Circuit Court, or before any Justice of the Peace of the county wherein such offense shall have been committed; Provided, That nothing herein contained shall be so construed as to prohibit any person wearing or carrying any weapon aforesaid on his own premises, or to prohibit persons traveling through the country, carrying such weapons while on a journey with their baggage, or to prohibit any officer of the law wearing or carrying such weapons when engaged in the discharge of his official duties, or any person summoned by any such officer to assist in the execution of any legal process, or any private person legally authorized to execute any legal process to him directed.

1881 Ark. Acts 191, An Act to Preserve the Public Peace and Prevent Crime, chap. XCVI (96), § 1-2.

That any person who shall wear or carry, in any manner whatever, as a weapon, any dirk or bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such pistols as are used in the army or navy of the United States, shall be guilty of a misdemeanor. . . . Any person, excepting such officers or persons on a journey, and on his premises, as are mentioned in section one of this act, who shall wear or carry any such pistol as i[s] used in the army or navy of the United States, in any manner except uncovered, and in his hand, shall be guilty of a misdemeanor.

## **CALIFORNIA**

1849 Cal. Stat. 245, An Act to Incorporate the City of San Francisco, § 127.

[I]f any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars or imprisoned in the county jail not more than three months.

S. Garfielde, Compiled Laws of the State of California: Containing All the Acts of the Legislature of a Public and General Nature, Now in Force, Passed at the Sessions of 1850-51-52-53. To Which are Prefixed the Declaration of Independence, the Constitutions of the United States and of California, the Treaty of Queretaro, and the Naturalization Laws of the United States Page 663-664, Image 682-683 (1853) available at The Making of Modern Law: Primary Sources. Sentence Enhancement for Use of Weapon | California | 1853  
Compiled Laws of California, § 127.

If any person shall be found having upon him or her any picklock, crow, key, bitt, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the county jail not more than two years; and if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars or imprisoned in the county jail not more than three months.

William H. R. Wood, Digest of the Laws of California: Containing All Laws of a General Character Which were in Force on the First Day of January, 1858; Also, the Declaration of Independence, Constitution of the United States, Articles of Confederation, Kentucky and Virginia Resolutions of 1798-99, Acts of Congress Relative to Public Lands and Pre-Emptions. Together with Judicial Decisions, Both of the Supreme Court of the United States and of California, to Which are Also Appended Numerous Forms for Obtaining Pre-Emption and Bounty Lands, Etc., Etc. Page 334, Image 340 (1861) available at The Making of Modern Law: Primary Sources.

Crimes and Punishments, Art. 1904. That any person in this state having, carrying or procuring from another person any dirk, dirk-knife, bowie-knife, sword, sword-cane, pistol, gun or other deadly weapon, who shall, in the presence of two or more persons, draw or exhibit any of said deadly weapons in a rude, angry and threatening manner, not in necessary self-defense, or who shall, in any manner, unlawfully use the same, in any fight or quarrel, the person or persons so offending, upon conviction thereof in any criminal court in any county of this state, shall be fined in any sum not less than one hundred, nor more than five hundred dollars, or imprisonment in the county jail not less than one nor more than six months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution; which said costs shall, in all cases be computed and collected in the same manner as costs in civil cases. . . provided, nevertheless, that no sheriff, deputy sheriff, marshal, constable or other peace officer, shall be held to answer under the provisions of this act, for drawing or exhibiting any of the weapons herein-before mentioned, while in the lawful discharge of his or their duties. . .

Theodore Henry Hittell, The General Laws of the State of California, from 1850 to 1864, Inclusive: Being a Compilation of All Acts of a General Nature Now in Force, with Full References to Repealed Acts, Special and Local Legislation, and

Statutory Constructions of the Supreme Court. To Which are Prefixed the Declaration of Independence, Constitution of the United States, Treaty of Guadalupe Hidalgo, Proclamations to the People of California, Constitution of the State of California, Act of Admission, and United States Naturalization Laws, with Notes of California Decisions Thereon Page 261, Image 272 (1868) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | California | 1864

An Act to Prohibit the Carrying of Concealed Weapons, § 1.

Every person not being peace-officer, provost-marshal, enrolling-officer, or officer acting under the laws of the United States in the department of the provost-marshal of this State, State and Federal assessors, collectors of taxes and licenses while in the performance of official duties, or traveler, who shall carry or wear any dirk, pistol, sword in cane, slungshot, or other dangerous or deadly weapon concealed, shall, upon conviction thereof before any court of competent jurisdiction, be deemed guilty of a misdemeanor, and shall be imprisoned in the county jail for not less than thirty nor more than ninety days, or fined in any sum not less than twenty nor more than two hundred dollars. § 2. Such persons, and no others, shall be deemed travelers within the meaning of this act, as may be actually engaged in making a journey at the time.

L. W. Moultrie, City Attorney, Charter and Ordinances of the City of Fresno, 1896 Page 37, Image 35 (1896) available at The Making of Modern Law: Primary Sources. Misdemeanors. § 53.

No junk-shop keeper or pawnbroker shall hire, loan or deliver to any minor under the age of 18 years any gun, pistol or other firearm, dirk, bowie-knife, powder, shot, bullets or any weapon, or any combustible or dangerous material, without the written consent of the parent or guardian of such minor.

L. W. Moultrie, Charter and Ordinances of the City of Fresno Page 30, Image 28 (1896) available at The Making of Modern Law: Primary Sources.

Ordinances of the City of Fresno, § 8.

Any person excepting peace officers and travelers, who shall carry concealed upon his person any pistol or firearm, slungshot, dirk or bowie-knife, or other deadly weapon, without a written permission (revocable at any time) from the president of the board of trustees, is guilty of a misdemeanor.

1917 Cal. Sess. Laws 221-225, An act relating to and regulating the carrying, possession, sale or other disposition of firearms capable of being concealed upon the person; prohibiting the possession, carrying, manufacturing and sale of certain other dangerous weapons and the giving, transferring and disposition thereof to other persons within this state; providing for the registering of the sales of firearms; prohibiting the carrying or possession of concealed weapons in municipal corporations; providing for the destruction of certain dangerous weapons as nuisances and making it a felony to use or attempt to use certain dangerous weapons against another, § 5.

Carrying Weapons | California | 1917

§ 5. Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver, or other firearm, or any instrument or weapon commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bomb, or bombshell or any other dangerous or deadly instrument or weapon, is guilty of a felony. The carrying or possession of any of the weapons specified in this section by any person while committing, or attempting or threatening to commit a felony, or breach of the peace, or any act of violence against the person or property of another, shall be presumptive evidence of carrying or possessing such weapon with intent to use the same in violation of this section.

1923 Cal. Stat. 695 An Act to Control and Regulate the Possession, Sale and Use of Pistols, Revolvers, and Other Firearms Capable of Being Concealed Upon the Person

Dangerous or Unusual Weapons, Felons, Foreigners and Others Deemed Dangerous By the State | California | 1923

§ 1. On and after the date upon which this act takes effect, every person who within the State of California manufactures or causes to be manufactured, or who imports into the state, or who keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, or who carries concealed upon his person any explosive substance, other than fixed ammunition, or who carries concealed upon his person any dirk or dagger, shall be guilty of a felony and upon a conviction thereof shall be punishable by imprisonment in a state prison for not less than one year nor for more than five years.

§ 2. On and after the date upon which this act takes effect, no unnaturalized foreign born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or of the



State of California or of any political subdivision thereof shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person.

## **COLORADO**

1862 Colo. Sess. Laws 56, An Act To Prevent The Carrying Of Concealed Deadly Weapons In The Cities And Towns Of This Territory, § 1.

If any person or persons shall, within any city, town, or village in this Territory, whether the same is incorporated or not, carry concealed upon his or her person any pistol, bowie knife, dagger, or other deadly weapon, shall, on conviction thereof before any justice of the peace of the proper county, be fined in a sum not less than five, nor more than thirty-five dollars.

1867 Colo. Sess. Laws 229, Criminal Code, § 149.

Carrying Weapons | Colorado | 1867

If any person or persons shall, within any city, town or village in this territory, whether the same is incorporated or not, carry concealed upon his or her person, any pistol, bowie-knife, dagger or other deadly weapon, such person shall, on conviction thereof before any justice of the peace of the proper county, be fined in any sum not less than five nor more than thirty-five dollars. The provision of this section shall not be construed to apply to sheriffs, constables and police officers, when in the execution of their official duties.

1876 Colo. Const. 30, art. II, § 13.

Post-Civil War State Constitutions | Colorado | 1876

That the right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when hereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

1876 Colo. Sess. Laws 304, General Laws, § 154:

[I]f any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, such person, on conviction shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail no exceeding six months.

Edward O. Wolcott, The Ordinances of Georgetown [Colorado] Passed June 7th, A.D. 1877, Together with the Charter of Georgetown, and the Amendments Thereto: A Copy of the Patent Heretofore Issued to Georgetown by the



Government of the United States, and the Rules and Order of Business Page 100, Image 101 (1877) available at The Making of Modern Law: Primary Sources.

Offenses Affecting Streets and Public Property, § 9.

If any person or persons, within the corporate limits of Georgetown, shall be found carrying concealed, upon his or her person, any pistol, bowie knife, dagger, or other deadly weapon, such person shall, on conviction thereof, be fined in a sum not less than five dollars, nor more than fifty dollars.

Colo. Rev. Stat 1774, Carrying Concealed Weapons—Penalty—Search Without Warrant—Jurisdiction of Justice, § 248. (1881)

No person, unless authorized so to do by the chief of police of a city, mayor of a town or the sheriff of a county, shall use or carry concealed upon his person any firearms, as defined by law, nor any pistol, revolver, bowie knife, dagger, sling shot, brass knuckles or other deadly weapon . . . .

Isham White, The Laws and Ordinances of the City of Denver, Colorado Page 369, Image 370 (1886) available at The Making of Modern Law: Primary Sources.

Sentence Enhancement for Use of Weapon | Colorado | 1886

City of Denver, Slung Shot – Brass Knuckles, § 10.

Whenever there shall be found upon the person of anyone who is guilty of a breach of the peace, or of conduct calculated to provoke a breach of the peace, any slung shot, colt, or knuckles of lead, brass or other metal, or, when upon trial, evidence shall be adduced proving that such weapons were in the possession or on the person of anyone while in the act of commission of the acts aforesaid, such person shall upon conviction be fined not less than twenty-five dollars nor more than three hundred dollars.

## **CONNECTICUT**

Charles Stoers Hamilton, Charter and Ordinances of the City of New Haven, Together with Legislative Acts Affecting Said City Page 164, Image 167 (1890) available at The Making of Modern Law: Primary Sources.

Good Order and Decency § 192.

Every person who shall carry in said City, any steel or brass knuckles, pistol, or any slung shot, stiletto or weapon of similar character, or shall carry any weapon concealed on his person without permission of the Mayor or Superintendent of Police in writing, shall, on conviction, pay a penalty of not less than five, nor more than fifty dollars for every such offense.

## **DELAWARE**

1797 Del. Laws 104, An Act For the Trial Of Negroes, ch. 43, § 6.

Race and Slavery Based | Delaware | 1797

And be it further enacted by the authority aforesaid, That if any Negro or Mulatto slave shall presume to carry any guns, swords, pistols, fowling pieces, clubs, or other arms and weapons whatsoever, without his master's special license for the same, and be convicted thereof before a magistrate, he shall be whipped with twenty-one lashes, upon his bare back.

1881 Del. Laws 987, An Act Providing for the Punishment of Persons Carrying Concealed Deadly Weapons, ch. 548, § 1.

That if any person shall carry concealed a deadly weapon upon or about his person other than an ordinary pocket knife, or shall knowingly sell a deadly weapon to a minor other than an ordinary pocket knife, such person shall, upon conviction thereof, be fined not less than twenty-five nor more than two hundred dollars or imprisoned in the county jail for not less than ten nor more than thirty days, or both at the discretion of the court: Provided, that the provisions of this section shall not apply to the carrying of the usual weapons by policemen and peace officers.

Revised Statutes of the State of Delaware, of Eight Hundred and Fifty-Two. As They Have Since Been Amended, Together with the Additional Laws of a Public and General Nature, Which Have Been Enacted Since the Publication of the Revised Code of Eighteen Fifty-Two. To the Year of Our Lord One Thousand Eight Hundred and Ninety-Three; to Which are Added the Constitutions of the United States and of this State, the Declaration of Independence, and Appendix Page 987, Image 1048 (1893) available at The Making of Modern Law: Primary Sources.

An Act Providing for the Punishment of Persons Carrying Concealed Deadly Weapons, § 1.

§ 1. That if any person shall carry concealed a deadly weapon upon or about his person other than an ordinary pocket knife, or shall knowingly sell a deadly weapon to a minor other than an ordinary pocket knife, such person shall, upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars or imprisoned in the county jail for not less than ten nor more than thirty days, or both at the discretion of the court: Provided, that the provisions of this section shall not apply to the carrying of the usual weapons by policemen and other peace officers.

§ 2. That if any person shall, except in lawful self-defense discharge any firearm in any public road in this State, shall be deemed guilty of a misdemeanor and upon

conviction thereof shall be punished by fine not exceeding fifty dollars or by imprisonment not exceeding one month, or both at the discretion of the court.

### **DISTRICT OF COLUMBIA**

An Act to Prevent the Carrying of Concealed Weapons, Aug. 10, 1871, reprinted in Laws of the District of Columbia: 1871-1872, Part II, 33 (1872).

Carrying Weapons || 1871

Ch. XXV. Be it enacted by the Legislative Assembly of the District of Columbia, That it shall not be lawful for any person or persons to carry or have concealed about their persons any deadly or dangerous weapons, such as daggers, air-guns, pistols, bowie-knives, dirk-knives, or dirks, razors, razor-blades, sword-canes, slung-shots, or brass or other metal knuckles, within the District of Columbia; and any person or persons who shall be duly convicted of so carrying or having concealed about their persons any such weapons shall forfeit and pay, upon such a conviction, not less than twenty dollars nor more than fifty dollars, which fine shall be prosecuted and recovered in the same manner as other penalties and forfeitures are sued for and recovered: Provided, That the officers, non-commissioned officers, and privates of the United States army, navy, and marine corps, police officers, and members of any regularly organized militia company or regiment, when on duty, shall be exempt from such penalties and forfeitures.

### **FLORIDA**

John P. Duval, Compilation of the Public Acts of the Legislative Council of the Territory of Florida, Passed Prior to 1840 Page 423, Image 425 (1839) available at The Making of Modern Law: Primary Sources.

An Act to Prevent any Person in this Territory from Carrying Arms Secretly. Be it Enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the passage of this act, it shall not be lawful for any person in this Territory to carry arms of any kind whatsoever secretly, on or about their persons; and if any dirk, pistol, or other arm, or weapon, except a common pocket-knife, shall be seen, or known to be secreted upon the person of any one in this Territory, such person so offending shall, on conviction, be fined not exceeding five hundred dollars, and not less than fifty dollars, or imprisoned not more than six months, and not less than one month, at the discretion of the jury: Provided, however, that this law shall not be so construed as to prevent any person from carrying arms openly, outside of all their clothes; and it shall be the duty of judges of the superior courts in this Territory, to give the matter contained in this act in special charge to the grand juries in the several counties in this Territory, at every session of the courts.

Fla. Act of Aug. 8, 1868, as codified in Fla. Rev. Stat., tit. 2, pt. 5 (1892) 2425. Manufacturing or selling slung shot: Whoever manufactures, or causes to be manufactured, or sells or exposes for sale any instrument or weapon of the kind usually known as slung-shot, or metallic knuckles, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

1868 Fla. Laws 2538, Persons Engaged in Criminal Offence, Having Weapons, chap. 7, § 10.

Sentence Enhancement for Use of Weapon | Florida | 1868

Whoever, when lawfully arrested while committing a criminal offense or a breach or disturbance of the public peace, is armed with or has on his person slung shot, metallic knuckles, billies, firearms or other dangerous weapon, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

James F McClellan, A Digest of the Laws of the State of Florida: From the Year One Thousand Eight Hundred and Twenty-Two, to the Eleventh Day of March, One Thousand Eight Hundred and Eighty-One, Inclusive, Page 403, Image 419 (1881) available at The Making of Modern Law: Primary Sources. [1868] Offences Against Public Peace, § 13.

Whoever shall carry arms of any kind whatever, secretly, on or about their person, or whoever shall have about or on their person any dirk, pistol or other arm or weapon, except a common pocket knife, upon conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding six months.

Florida Act of Aug. 6, 1888, chap. 1637, subchap. 7, § 10, as codified in Fla. Rev. State., tit. 2, pt. 5 (1892) 2423.

Persons Engaged in criminal offense having weapons. – Whoever, when lawfully arrested while committing a criminal offense or a breach or disturbance of the public peace is armed or has on his person slung-shot, metallic knuckles, billies, firearms or other dangerous weapon, shall be punished by imprisonment not exceeding one year and by fine not exceeding fifty dollars.

## **GEORGIA**

Lucius Q.C. Lamar, A Compilation of the Laws of the State of Georgia, Passed by the Legislature since the Year 1810 to the Year 1819, Inclusive. Comprising all the

Laws Passed within those Periods, Arranged under Appropriate Heads, with Notes of Reference to those Laws, or Parts of Laws, which are Amended or Repealed to which are Added such Concurred and Approved Resolutions, as are Either of General, Local, or Private Moment. Concluding with a Copious Index to the Laws, a Separate one to the Resolutions Page 599, Image 605 (1821) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Georgia | 1816

Offences Against the Public Peace, (1816) § 19.

If any person shall be apprehended, having upon him or her any picklock, key, crow, jack, bit or other implement, with intent feloniously to break and enter into any dwelling-house, ware-house, store, shop, coach-house, stable, or out-house, or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person, or shall be found in or upon any dwelling-house, ware-house, store, shop, coach-house, stable, or out-house, with intent to steal any goods or chattels; every such person shall be deemed a rogue and vagabond, and on conviction, shall be sentenced to undergo an imprisonment in the common jail of the county, or in the penitentiary, at hard labour, for such period of time as the jury shall recommend to the court.

1860 Ga. Laws 56, An Act to add an additional Section to the 13th Division of the Penal Code, making it penal to sell to or furnish slaves or free persons of color, with weapons of offence and defence; and for other purposes therein mentioned, § 1.

[A]ny person other than the owner, who shall sell or furnish to any slave or free person of color, any gun, pistol, bowie knife, slung shot, sword cane, or other weapon used for the purpose of offence or defense, shall, on indictment and conviction, be fined by the Court in a sum not exceeding five hundred dollars, and imprisoned in the common Jail of the county not exceeding six months . . .

R. H. Clark, The Code of the State of Georgia (1873) § 4528 – Deadly weapons not to be carried in public places

No person in this State is permitted or allowed to carry about his or her person, any dirk, bowie knife, pistol or revolver, or any kind of deadly weapon, to any Court of justice, or any election ground, or precinct, or any place of public worship, or any other public gathering in this State, except militia muster grounds; and if any person or persons shall violate any portion of this section, he, she or they shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than twenty nor more than fifty dollars for each and every such offense, or imprisonment in the common jail of the county not less than ten nor more than twenty days, or both, at the discretion of the Court.

## **HAWAII**

1852 Haw. Sess. Laws 19, Act to Prevent the Carrying of Deadly Weapons  
Dangerous or Unusual Weapons | Hawaii | 1852

§ 1. Any person not authorized by law, who shall carry, or be found armed with, any bowie-knife, sword-cane, pistol, air-gun, slung-shot or other deadly weapon, shall be liable to a fine of no more than Thirty, and no less than Ten Dollars, or in default of payment of such fine, to imprisonment at hard labor, for a term not exceeding two months and no less than fifteen days, upon conviction of such offense before any District Magistrate, unless good cause be shown for having such dangerous weapons: and any such person may be immediately arrested without warrant by the Marshal or any Sheriff, Constable or other officer or person and be lodged in prison until he can be taken before such Magistrate.

1913 Haw. Rev. Laws ch. 209, § 3089, Carrying Deadly Weapons  
Dangerous or Unusual Weapons | Hawaii | 1913

§ 3089. Persons not authorized; punishment. Any person not authorized by law, who shall carry, or be found armed with any bowie-knife, sword-cane, pistol, air-gun, slung-shot, or other deadly weapon, shall be liable to a fine of not more than Two Hundred and Fifty Dollars and not less than Ten Dollars, or in default of payment of such fine, to imprisonment of a term not exceeding one year, nor less than three months, upon conviction for such offense, unless good cause be shown for having such dangerous weapon; and any such person may be immediately arrested without warrant by the high sheriff, or any sheriff, policeman, or other officer or person.

## **IDAHO**

Crimes and Punishments, in Compiled and Revised Laws of the Territory of Idaho 354 (M. Kelly, Territorial Printer 1875).

Carrying Weapons | Idaho | 1875

§ 133. If any person shall have found upon him or her any pick-lock, crow-key, bit or other instrument or tool, with intent feloniously to crack and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in the aforesaid buildings with intent to steal any money, goods and chattels, every person so offending shall, on conviction thereof, be imprisoned in the Territorial prison for a term not less than one year nor more than five years; and if any person shall have upon him or her any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every



such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

Charter and Revised Ordinances of Boise City, Idaho. In Effect April 12, 1894  
Page 118-119, Image 119-120 (1894) available at The Making of Modern Law:  
Primary Sources.

Carrying Weapons | Idaho | 1879

Carrying Concealed Weapons, § 36.

Every person not being a sheriff, deputy sheriff, constable or other police officer, who shall carry or wear within the incorporated limits of Boise City, Idaho, any bowie knife, dirk knife, pistol or sword in cane, slung-shot, metallic knuckles, or other dangerous or deadly weapons, concealed, unless such persons be traveling or setting out on a journey, shall, upon conviction thereof before the city magistrate of said Boise City, be fined in any sum not exceeding twenty-five dollars for each offense, or imprisoned in the city jail for not more than twenty days, or by both such fine and imprisonment.

1909 Id. Sess. Laws 6, An Act To Regulate the Use and Carrying of Concealed Deadly Weapons and to Regulate the Sale or Delivery of Deadly Weapons to Minors Under the Age of Sixteen Years to Provide a Penalty for the Violation of the Provisions of this Act, and to Exempt Certain Persons, § 1.

Carrying Weapons | Idaho | 1909

If any person, (excepting officials of a county, officials of the State of Idaho, officials of the United States, peace officers, guards of any jail, any officer of any express company on duty), shall carry concealed upon or about his person any dirk, dirk knife, bowie knife, dagger, slung shot, pistol, revolver, gun or any other deadly or dangerous weapon within the limits or confines of any city, town or village, or in any public assembly, or in any mining, lumbering, logging, railroad, or other construction camp within the State of Idaho . . . .



## ILLINOIS

Mason Brayman, Revised Statutes of the State of Illinois: Adopted by the General Assembly of Said State, at Its Regular Session, Held in the Years A. D. 1844-'5: Together with an Appendix Containing Acts Passed at the Same and Previous Sessions, Not Incorporated in the Revised Statutes, but Which Remain in Force Page 176, Image 188 (1845) available at The Making of Modern Law: Primary Sources.

Sentence Enhancement for Use of Weapon | Illinois | 1845  
Criminal Jurisprudence, § 139.

If any person shall be found,, having upon him or her, any pick-lock, crow, key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any goods and chattels, every such person so offending, shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary, for any term not exceeding two years. And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined, in a sum not exceeding one hundred dollars, or imprisoned, not exceeding three months.

Harvey Bostwick Hurd, The Revised Statutes of the State of Illinois. A. D. 1874. Comprising the Revised Acts of 1871-2 and 1873-4, Together with All Other General Statutes of the State, in Force on the First Day of July, 1874 Page 360, Image 368 (1874) available at The Making of Modern Law: Primary Sources.  
Disorderly Conduct: Disturbing the Peace, § 56.

Whoever, at a late and unusual hour of the night time, willfully and maliciously disturbs the peace and quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous or offensive carriage, threatening, traducing, quarreling, challenging to fight or fighting, or whoever shall carry concealed weapons, or in a threatening manner display any pistol, knife, slungshot, brass, steel or iron knuckles, or other deadly weapon, day or night, shall be fined not exceeding \$100.

Consider H. Willett, Laws and Ordinances Governing the Village of Hyde Park [Illinois] Together with Its Charter and General Laws Affecting Municipal Corporations; Special Ordinances and Charters under Which Corporations Have Vested Rights in the Village. Also, Summary of Decisions of the Supreme Court Relating to Municipal Corporations, Taxation and Assessments Page 64, Image 64 (1876) available at The Making of Modern Law: Primary Sources.

Misdemeanors, § 39.

No person, except peace officers, shall carry or wear under their clothes, or concealed about their person, any pistol, revolver, slung-shot, knuckles, bowie-knife, dirk-knife, dirk, dagger, or any other dangerous or deadly weapon, except by written permission of the Captain of Police.

Harvey Bostwick Hurd, Late Commissioner, The Revised Statutes of the State of Illinois. 1882. Comprising the “Revised Statutes of 1874,” and All Amendments Thereto, Together with the General Acts of 1875, 1877, 1879, 1881 and 1882, Being All the General Statutes of the State, in Force on the First Day of December, 1882 Page 375, Image 392 (1882) available at The Making of Modern Law: Primary Sources. [1881]

Deadly Weapons: Selling or Giving to Minor. § 54b.

Whoever, not being the father, guardian, or employer or the minor herein named, by himself or agent, shall sell, give, loan, hire or barter, or shall offer to sell, give, loan, hire or barter to any minor within this state, any pistol, revolver, derringer, bowie knife, dirk or other deadly weapon of like character, capable of being secreted upon the person, shall be guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars (\$25), nor more than two hundred (\$200).

Revised Ordinances of the City of Danville [Illinois] Page 66, Image 133 (1883) available at The Making of Modern Law: Primary Sources.

Ordinances of the City of Danville. Concealed Weapons. § 22.

Whoever shall carry concealed upon or about his person any pistol, revolver, derringer, bowie-knife, dirk, slung-shot, metallic knuckles, or a razor, as a weapon, or any other deadly weapon of like character, capable or being concealed upon the person, or whoever shall in a threatening or boisterous manner, flourish or display the same, shall be fined not less than one dollar, nor more than one hundred dollars; and in addition to the said penalty shall, upon the order of the magistrate before whom such conviction is had, forfeits the weapon so carried to the city.

Illinois Act of Apr. 16, 1881, as codified in Ill. Stat. Ann., Crim. Code, chap. 38 (1885) 88. Possession or sale forbidden, § 1.

Be it enacted by the people of the state of Illinois represented in the General Assembly. That whoever shall have in his possession, or sell, or give or loan, hire or barter, or whoever shall offer to sell, give loan, have or barter, to any person within this state, any slung shot or metallic knuckles, or other deadline weapon of like character, or any person in whose possession such weapons shall be found, shall be guilty of a misdemeanor . . .

## **INDIANA**

1804 Ind. Acts 108, A Law Entitled a Law Respecting Slaves, § 4.

And be it further enacted, That no slave or mulatto whatsoever shall keep or carry any gun, powder, shot, club or other weapon whatsoever, offensive or defensive, but all and every gun weapon and ammunition found in the possession or custody of any negro or mulatto, may be seized by any person and upon due proof thereof made before any justice of the peace of the district where such seizure shall be, shall by his order be forfeited to the seizer, for his use and moreover every such offender shall have and receive by order of such justice any number of loashes not exceeding thirty nine on his or her bare back, well laid for every such offense.

1855 Ind. Acts 153, An Act To Provide For The Punishment Of Persons Interfering With Trains or Railroads, chap. 79, § 1.

That any person who shall shoot a gun, pistol, or other weapon, or throw a stone, stick, clubs, or any other substance whatever at or against any locomotive, or car, or train of cars containing persons on any railroad in this State, shall be deemed guilty of a misdemeanor . . .

1859 Ind. Acts 129, An Act to Prevent Carrying Concealed or Dangerous Weapons, and to Provide Punishment Therefor.

§ 1. Be it enacted by the General Assembly of the State of Indiana, That every person not being a traveler, who shall wear or carry any dirk, pistol, bowie-knife, dagger, sword in cane, or any other dangerous or deadly weapon concealed, or who shall carry or wear any such weapon openly, with the intent or avowed purpose of injuring his fellow man, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

1875 Ind. Acts 62, An Act Defining Certain Misdemeanors, And Prescribing Penalties Therefore, § 1.

That if any person shall draw or threaten to use any pistol, dirk, knife, slung shot, or any other deadly or dangerous weapon upon any other person he shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in any sum not less than one nor more than five hundred dollars, to which may be added imprisonment in the county jail not to exceed six months; That the provisions of this act shall not apply to persons drawing or threatening to use such dangerous or deadly weapons in defense of his person or property, or in defense of those entitled to his protection by law.

The Revised Statutes of Indiana: Containing, Also, the United States and Indiana Constitutions and an Appendix of Historical Documents. Vol. 1 Page 366, Image 388 (1881) available at The Making of Modern Law: Primary Sources.

Sensitive Places and Times | Indiana | 1881

Crimes. § 1957. Attacking Public Conveyance. 56. Whoever maliciously or mischievously shoots a gun, rifle, pistol, or other missile or weapon, or throws a stone, stick, club, or other substance whatever, at or against any stage-coach, locomotive, railroad-car, or train of cars, or street-car on any railroad in this State, or at or against any wharf-boat, steamboat, or other water-craft, shall be imprisoned in the county jail not more than one year nor less than thirty days, and fined not more than one hundred dollars nor less than ten dollars.

1905 Ind. Acts 677, Public Conveyance—Attacking, § 410.

Sensitive Places and Times | Indiana | 1905

Whoever maliciously or mischievously shoots a gun, rifle, pistol or other weapon, or throws a stone, stick, club or any other substance whatever, at or against any stage coach, or any locomotive, railroad car, or train of cars, street car, or interurban car on any railroad in this state, or at or against any wharf-boat, steamboat, or other watercraft, shall be imprisoned in the county jail not less than thirty days nor more than one year, and fined not less than ten dollars nor more than one hundred dollars.

## IOWA

S. J. Quincy, Revised Ordinances of the City of Sioux City. Sioux City, Iowa Page 62, Image 62 (1882) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Iowa | 1882

Ordinances of the City of Sioux City, Iowa, § 4.

No person shall, within the limits of the city, wear under his clothes, or concealed about his person, any pistol, revolver, slung-shot, cross-knuckles, knuckles of lead, brass or other metal, or any bowie-knife, razor, billy, dirk, dirk-knife or bowie-knife, or other dangerous weapon. Provided, that this section shall not be so construed as to prevent any United States, State, county, or city officer or officers, or member of the city government, from carrying any such weapon as may be necessary in the proper discharge of his official duties.

Geoffrey Andrew Holmes, Compiled Ordinances of the City of Council Bluffs, and Containing the Statutes Applicable to Cities of the First-Class, Organized under the Laws of Iowa Page 206-207, Image 209-210 (1887) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Iowa | 1887

Carrying Concealed Weapons Prohibited, § 105.

It shall be unlawful for any person to carry under his clothes or concealed about his person, or found in his possession, any pistol or firearms, slungshot, brass knuckles, or knuckles of lead, brass or other metal or material, or any sand bag, air guns of any description, dagger, bowie knife, or instrument for cutting, stabbing or striking, or other dangerous or deadly weapon, instrument or device; provided that this section shall not be construed to prohibit any officer of the United States, or of any State, or any peace officer, from wearing and carrying such weapons as may be convenient, necessary and proper for the discharge of his official duties.

William H. Baily, The Revised Ordinances of Nineteen Hundred of the City of Des Moines, Iowa Page 89-90, Image 89-90 (1900) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Iowa | 1900

Ordinances City of Des Moines, Weapons, Concealed, § 209.

It shall be unlawful for any person to carry under his clothes or concealed about his person, or found in his possession, any pistol or other firearms, slungshot, brass knuckles, or knuckles of lead, brass or other metal or material, or any sand bag, air guns of any description, dagger, bowie knife, dirk knife, or other knife or instrument for cutting, stabbing or striking, or other dangerous or deadly weapon, instrument or device. Provided, that this section shall not be construed to prohibit any officer of the United States or of any State, or any peace officer from wearing or carrying such weapons as may be convenient, necessary and proper for the discharge of his official duties.

## KANSAS

1883 Kan. Sess. Laws 159, An Act To Prevent Selling, Trading Or Giving Deadly Weapons Or Toy Pistols To Minors, And To Provide Punishment Therefor, §§ 1-2.

§ 1. Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver, or toy pistol, by which cartridges or caps may be exploded, or any dirk, bowie knife, brass knuckles, slung shot, or other dangerous weapons to any minor, or to any person of notoriously unsound mind, shall be deemed guilty of a misdemeanor, and shall upon conviction before any court of competent jurisdiction, be fined not less than five nor more than one hundred dollars.

§ 2. Any minor who shall have in his possession any pistol, revolver or toy pistol, by which cartridges may be exploded, or any dirk, bowie-knife, brass knuckles, slung shot or other dangerous weapon, shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction shall be fined not less than one nore more than ten dollars.

C. B. Pierce, Charter and Ordinances of the City of Leavenworth, with an Appendix Page 45, Image 45 (1863) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Kansas | 1862

An Ordinance Relating to Misdemeanors, § 23.

For carrying or having on his or her person in a concealed manner, any pistol, dirk, bowie knife, revolver, slung shot, billy, brass, lead or iron knuckles, or any other deadly weapon within this city, a fine not less than three nor more than one hundred dollars.

883 Kan. Sess. Laws 159, An Act To Prevent Selling, Trading Or Giving Deadly Weapons Or Toy Pistols To Minors, And To Provide Punishment Therefor, §§ 1-2.

§ 1. Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver, or toy pistol, by which cartridges or caps may be exploded, or any dirk, bowie knife, brass knuckles, slung shot, or other dangerous weapons to any minor, or to any person of notoriously unsound mind, shall be deemed guilty of a misdemeanor, and shall upon conviction before any court of competent jurisdiction, be fined not less than five nor more than one hundred dollars.

§ 2. Any minor who shall have in his possession any pistol, revolver or toy pistol, by which cartridges may be exploded, or any dirk, bowie-knife, brass knuckles, slung shot or other dangerous weapon, shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction shall be fined not less than one nore more than ten dollars.



O. P. Ergenbright, Revised Ordinances of the City of Independence, Kansas: Together with the Amended Laws Governing Cities of the Second Class and Standing Rules of the City Council Page 162, Image 157 (1887) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Kansas | 1887

Weapons, § 27. Any person who in this city shall draw any pistol or other weapon in a hostile manner, or shall make any demonstration or threat of using such weapon on or against any person; or any person who shall carry or have on his or her person, in a concealed manner, any pistol, dirk, bowie-knife, revolver, slung-shot, billy, brass, lead, or iron knuckles, or any deadly weapon, within this city, shall be fined not less than five dollars, nor more than one hundred dollars: Provided, that this ordinance shall not be so construed as to prohibit officers of the law while on duty from being armed.

## **KENTUCKY**

1798 Ky. Acts 106. No negro, mulatto, or Indian whatsoever shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive but all and every gun, weapon and ammunition found in the possession or custody of any negro, mulatto or Indian may be seized by any person and upon due proof thereof made before any justice of the peace of the county where such seizure shall be shall by his order, be forfeited to the seizer for his own use, and moreover every such offender shall have and receive by order of such justice any number of lashes not exceeding thirty nine on his or her back, well laid for every such offense.

1859 Ky. Acts 245, An Act to Amend An Act E ntitled “An Act to Reduce to One the Several Acts in Relation to the Town of Harrodsburg, § 23.

If any person, other than the parent or guardian, shall sell, give or loan, any pistol, dirk, bowie knife, brass knucks, slung-shot, colt, cane-gun, or other deadly weapon, which is carried concealed, to any minor, or slave, or free negro, he shall be fined fifty dollars.

## **LOUISIANA**

1813 La. Acts 172, An Act Against Carrying Concealed Weapons, and Going Armed in Public Places in an Unneccessary Manner, § 1.

Carrying Weapons | Louisiana | 1813

Be it enacted by the senate and house of representatives of the state of Louisiana, in general assembly convened, That from and after the passage of this act, any person who shall be found with any concealed weapon, such as a dirk, dagger,



knife, pistol, or any other deadly weapon concealed in his bosom, coat, or in any other place about him that do not appear in full open view, any person so offending, shall on conviction thereof before any justice of the peace, be subject to pay a fine . . . .

Henry A. Bullard & Thomas Curry, 1 A New Digest of the Statute Laws of the State of Louisiana, from the Change of Government to the Year 1841 at 252 (E. Johns & Co., New Orleans, 1842).

Carrying Weapons | Louisiana | 1842

[A]ny person who shall be found with any concealed weapon, such as a dirk, dagger, knife, pistol, or any other deadly weapon concealed in his bosom, coat, or in any other place about him, that do not appear in full open view, any person so offending, shall, on conviction thereof, before an justice of the peace, be subject to pay a fine not to exceed fifty dollars, nor less than twenty dollars . . . .

1870 La. Acts 159–60, An Act to Regulate the Conduct and to Maintain the Freedom of Party Election . . . , § 73.

Subject(s): Sensitive Places and Times

[I]t shall be unlawful for any person to carry any gun, pistol, bowie knife or other dangerous weapon, concealed or unconcealed, on any day of election during the hours the polls are open, or on any day of registration or revision of registration, within a distance of one-half mile of any place of registration or revision of registration; any person violating the provisions of this section shall be deemed guilty of a misdemeanor; and on conviction shall be punished by a fine of not less than one hundred dollars, and imprisonment in the parish jail not less than one month . . . .

La. Const. of 1879, art. III.

Post-Civil War State Constitutions | Louisiana | 1879

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed.

## MAINE

An Act to Prevent Routs, Riots, and Tumultuous assemblies, and the Evil Consequences Thereof, reprinted in CUMBERLAND GAZETTE (Portland, MA.), Nov. 17, 1786, at 1. On October 26, 1786 the following was passed into law by the Massachusetts Assembly: That from & after the publication of this act, if any persons, to the number of twelve, or more, being armed with clubs or other weapons; or if any number of persons, consisting of thirty, or more, shall be unlawfully, routously, riotously or tumultuously assembled, any Justice of the Peace, Sheriff, or Deputy ... or Constable ... shall openly make [a] proclamation [asking them to disperse, and if they do not disperse within one hour, the officer is] ... empowered, to require the aid of a sufficient number of persons in arms ... and if any such person or persons [assembled illegally] shall be killed or wounded, by reason of his or their resisting the persons endeavoring to disperse or seize them, the said Justice, Sheriff, Deputy-Sheriff, Constable and their assistants, shall be indemnified, and held guiltless.

The Revised Statutes of the State of Maine, Passed October 22, 1840; To Which are Prefixed the Constitutions of the United States and of the State of Maine, and to Which Are Subjoined the Other Public Laws of 1840 and 1841, with an Appendix Page 709, Image 725 (1847) available at The Making of Modern Law: Primary Sources.

Justices of the Peace, § 16.

Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may, on the complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term, not exceeding one year, with the right of appeal as before provided.

1841 Me. Laws 709, ch. 169, § 16.

If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

The Revised Statutes of the State of Maine, Passed August 29, 1883, and Taking Effect January 1, 1884 Page 928, Image 955 (1884) available at The Making of Modern Law: Primary Sources.

Prevention of Crimes, § 10.

Whoever goes armed with any dirk, pistol, or other offensive and dangerous weapon, without just cause to fear an assault on himself, family, or property, may, on complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties to keep the peace for a term not exceeding one year, and in case of refusal, may be committed as provided in the preceding sections.

## **MARYLAND**

The Laws Of Maryland, With The Charter, The Bill Of Rights, The Constitution Of The State, And Its Alterations, The Declaration Of Independence, And The Constitution Of The United States, And Its Amendments Page 465, Image 466 (1811) available at The Making of Modern Law: Primary Sources.

Sentence Enhancement for Use of Weapon | Maryland | 1809

If any person shall be apprehended, having upon him or her any picklock, key, crow, jack, bit or other implement, with an intent feloniously to break and enter into any dwelling-house, ware-house, stable or out-house, or shall have upon him or her any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person, or shall be found in or upon any dwelling-house, warehouse, stable or out-house, or in any enclosed yard or garden, or area belonging to any house, with an intent to steal any goods or chattels, every such person shall be deemed a rogue and vagabond, and, on being duly convicted thereof, shall be sentenced to undergo a confinement in the said penitentiary for a period of time not less than three months nor more than two years, to be treated as law prescribes.

1872 Md. Laws 57, An Act To Add An Additional Section To Article Two Of The Code Of Public Local Laws, Entitled “Anne Arundel County,” Sub-title “Annapolis,” To Prevent The Carrying Of concealed Weapons In Said City, § 246. Carrying Weapons | Maryland | 1872

It shall not be lawful for any person to carry concealed, in Annapolis, whether a resident thereof or not, any pistol, dirk-knife, bowie-knife, sling-shot, billy, razor, brass, iron or other metal knuckles, or any other deadly weapon, under a penalty of a fine of not less than three, nor more than ten dollars in each case, in the discretion of the Justice of the Peace, before whom the same may be tried, to be collected. . .

John Prentiss Poe, The Maryland Code : Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Public Local Acts of the Session of 1888 incorporated therein Page 1457, Image 382 (Vol. 2, 1888) available at The Making of Modern Law: Primary Sources.

Sensitive Places and Times | Maryland | 1874

Election Districts—Fences. § 99.

It shall not be lawful for any person in Kent county to carry, on the days of election, secretly or otherwise, any gun, pistol, dirk, dirk-knife, razor, billy or bludgeon; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace of said county, shall be fined not less than five nor more than twenty dollars, and on refusal to pay said fine shall be committed by such justice of the peace to the jail of the county until the same shall be paid.

John Prentiss Poe, The Maryland Code. Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Public Local Acts of the Session of 1888 Incorporated Therein Page 522-523, Image 531-532 (Vol. 1, 1888) available at The Making of Modern Law: Primary Sources.

Sentence Enhancement for Use of Weapon | Maryland | 1884

City of Baltimore, § 742.

Whenever any person shall be arrested in the city of Baltimore, charged with any crime or misdemeanor, or for being drunk or disorderly, or for any breach of the peace, and shall be taken before any of the police justices of the peace of the said city, and any such person shall be found to have concealed about his person any pistol, dirk knife, bowie-knife, sling-shot, billy, brass, iron or any other metal knuckles, razor, or any other deadly weapon whatsoever, such person shall be subject to a fine of not less than five dollars nor more than twenty-five dollars in the discretion of the police justice of the peace before whom such person may be taken, and the confiscation of the weapon so found, which said fine shall be collected as other fines are now collected; provided, however, that the provisions of this section shall not apply to those persons who, as conservators of the peace are entitled or required to carry a pistol or other weapon as a part of their official equipment.

1886 Md. Laws 315, An Act to Prevent the Carrying of Guns, Pistols, Dirk-knives, Razors, Billies or Bludgeons by any Person in Calvert County, on the Days of Election in said County, Within One Mile of the Polls § 1:

That from and after the passage of this act, it shall not be lawful for any person in Calvert County to carry, on the days of election and primary election within three hundred yards of the polls, secretly, or otherwise, any gun, pistol, dirk, dirk-knife,

razor, billy or bludgeon, and any person violating the provisions of this act, shall be deemed guilty of a misdemeanor and on conviction thereof by the Circuit Court of Calvert County . . . shall be fined not less than ten nor more than fifty dollars for each such offense. . .

John Prentiss Poe, The Maryland Code. Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Acts of the Session of 1888 Incorporated Therein, and Prefaced with the Constitution of the State Page 468-469, Image 568-569 (Vol. 1, 1888) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Maryland | 1886  
Concealed Weapons, § 30.

Every person, not being a conservator of the peace entitled or required to carry such weapon as a part of his official equipment, who shall wear or carry any pistol, dirk-knife, bowie- knife, slung-shot, billy, sand-club, metal knuckles, razor, or any other dangerous or deadly weapon of any kind whatsoever, (penknives excepted,) concealed upon or about his person; and every person who shall carry or wear any such weapon openly, with the intent or purpose of injuring any person, shall, upon conviction thereof, be fined not more than five hundred dollars, or be imprisoned not more than six months in jail or in the house of correction.

1886 Md. Laws 315, An Act to Prevent the Carrying of Guns, Pistols, Dirk-knives, Razors, Billies or Bludgeons by any Person in Calvert County, on the Days of Election in said County, Within One Mile of the Polls § 1.

That from and after the passage of this act, it shall not be lawful for any person in Calvert County to carry, on the days of election and primary election within three hundred yards of the polls, secretly, or otherwise, any gun, pistol, dirk, dirk-knife, razor, billy or bludgeon, and any person violating the provisions of this act, shall be deemed guilty of a misdemeanor and on conviction thereof by the Circuit Court of Calvert County . . . shall be fined not less than ten nor more than fifty dollars for each such offense. . .

John Prentiss Poe, The Baltimore City Code, Containing the Public Local Laws of Maryland Relating to the City of Baltimore, and the Ordinances of the Mayor and City Council, in Force on the First Day of November, 1891, with a Supplement, Containing the Public Local Laws Relating to the City of Baltimore, Passed at the Session of 1892 of the General Assembly, and also the Ordinances of the Mayor and City Council, Passed at the Session of 1891-1892, and of 1892-1893, up to the Summer Recess of 1893 Page 297-298, Image 306-307 (1893) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Maryland | 1890

Ordinances of Baltimore, § 742A.

Every person in said city of Baltimore not being a conservator of the peace, entitled or required to carry such weapons as a part of his official equipment, who shall wear or carry any pistol, dirk-knife, bowie-knife, sling-shot, billy, sand-club, metal knuckles, razor or any other dangerous or deadly weapon of any kind whatsoever, (pen knives excepted.) concealed upon or about his person; and every person who shall carry or wear such weapons openly, with the intent or purpose of injuring any person, shall, upon a conviction thereof, be fined not more than five hundred dollars, and be imprisoned not more than six months in jail or in the house of correction; that this act shall not release or discharge any person or persons already offending against the general law in such cases made and provided, but any such person or persons may be proceeded against, prosecuted and punished under the general law of this State as if this act had not been passed.

## **MASSACHUSETTS**

1750 Mass. Acts 544, An Act For Preventing And Suppressing Of Riots, Routs And Unlawful Assemblies, chap. 17, § 1.

If any persons to the number of twelve or more, being armed with clubs or other weapons. . . shall be unlawfully, riotously, or tumultuously assembled . . . (Read riot act, if don't disperse) . . . It shall be lawful for every officer . . . to seize such persons, and carry them before a justice of the peace; and if such persons shall be killed or hurt by reason of their resisting . . . officers and their assistants shall be indemnified and held guiltless.

Theron Metcalf, The Revised Statutes of the Commonwealth of Massachusetts, Passed November 4, 1835; to Which are Subjoined, an Act in Amendment Thereof, and an Act Expressly to Repeal the Acts Which are Consolidated Therein, Both Passed in February 1836; and to Which are Prefixed, the Constitutions of the United States and of the Commonwealth of Massachusetts Page 750, Image 764 (1836) available at The Making of Modern Law: Primary Sources.

Of Proceedings to Prevent the Commission of Crimes, § 16.

If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

1814 Mass. Acts 464, An Act In Addition To An Act, Entitled “An Act To Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth,” ch. 192, § 1, 2.

All musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the same shall be stocked, be proved by the person appointed according to the provisions of an act . . . ; § 2 That if any person of persons, from and after the passing of this act, shall manufacture, within this Commonwealth, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the barrels first proved according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act.

1850 Mass. Gen. Law, chap. 194, §§ 1, 2, as codified in Mass. Gen. Stat., chap. 164 (1873) § 10.

Whoever when arrested upon a warrant of a magistrate issued against him for an alleged offense against the laws of this state, and whoever when arrested by a sheriff, deputy sheriff, constable, police officer, or watchman, while committing a criminal offense against the laws of this state, or a breach or disturbance of the public peace, is armed with, or has on his person, slung shot, metallic knuckles, bills, or other dangerous weapon, shall be punished by fine . . .

1850 Mass. Gen. Law, chap. 194, §§ 1, 2 as codified in Mass. Gen. Stat., chap. 164 (1873) § 11.

Whoever manufactures, or causes to be manufactured, or sells, or exposes for sale, any instrument or weapon of the kind usually known as slung shot, or metallic



knuckles, shall be punished by fine not less than fifty dollars, or by imprisonment in the jail not exceeding six months.

1927 Mass. Acts 416, An Act Relative to Machine Guns and Other Firearms, ch. 326, § 5 (amending §10)

Carrying Weapons | Massachusetts | 1927

Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, a pistol or revolver, loaded or unloaded, or possesses a machine gun as defined in section one hundred and twenty-one of chapter one hundred and forty... or whoever so carries any stiletto, dagger, dirk knife, slung shot, metallic knuckles or sawed off shotgun, or whoever, when arrested upon a warrant for an alleged crime or when arrested while committing a crime or a breach or disturbance of the public peace, is armed with, or has on his person, or has on his person or under his control in a vehicle, a billy or dangerous weapon other than those herein mentioned, shall be punished by imprisonment for not less than six months nor more than two and a half years in a jail . . .

## **MICHIGAN**

1887 Mich. Pub. Acts 144, An Act to Prevent The Carrying Of Concealed Weapons, And To Provide Punishment Therefore, § 1.

It shall be unlawful for any person, except officers of the peace and night-watches legitimately employed as such, to go armed with a dirk, dagger, sword, pistol, air gun, stiletto, metallic knuckles, pocket-billy, sand bag, skull cracker, slung shot, razor or other offensive and dangerous weapon or instrument concealed upon his person.

1891 Mich. Pub. Acts 409, Police Department, pt 15:. . . And all persons who shall carry concealed on or about their persons, any pistol, revolver, bowie knife, dirk, slung shot, billie, sand bag, false knuckles, or other dangerous weapon, or who shall lay in wait , lurk or be concealed, with intent to do injury to any person or property, who shall threaten to beat or kill another or injure him in his person or property . . . shall be deemed a disorderly person, and upon conviction thereof may be punished by a fine not exceeding one hundred dollars and the costs of prosecution, and in imposition of any such fine and costs the court may make a further sentence that in default of payment, such offender be imprisoned in the city prison. . .

1927 Mich. Pub. Acts 888-89, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3.

Dangerous or Unusual Weapons | Michigan | 1927

It shall be unlawful within this state to manufacture, sell, offer for sale, or possess any machine gun or firearm which can be fired more than sixteen times without reloading, or any muffler, silencer or device for deadening or muffling the sound of a discharged firearm, or any bomb or bombshell, or any blackjack, slung shot, billy, metallic knuckles, sandclub, sandbag or bludgeon. Any person convicted of a violation of this section shall be guilty of a felony and shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state prison not more than five years, or by both such fine and imprisonment in the discretion of the court. . . .

1929 Mich. Pub. Acts 529, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3.

Dangerous or Unusual Weapons | Michigan | 1929

It shall be unlawful within this state to manufacture, sell, offer for sale or possess any machine gun or firearm which can be fired more than sixteen times without reloading or any muffler, silencer, or device for deadening or muffling the sound of a discharged firearm, or any bomb, or bomb shell, blackjack, slung shot, billy, metallic knuckles, sand club, sand bag, or bludgeon or any gas ejecting device, weapon, cartridge, container, or contrivance designed or equipped for or capable of ejecting any gas which will either temporarily or permanently disable, incapacitate, injure or harm any person with whom it comes in contact.

**MINNESOTA**

W. P. Murray, The Municipal Code of Saint Paul: Comprising the Laws of the State of Minnesota Relating to the City of Saint Paul, and the Ordinances of the Common Council; Revised to December 1, 1884 Page 289, Image 295 (1884) available at The Making of Modern Law: Primary Sources.

Concealed Weapons – License, § 1.

It shall be unlawful for any person, within the limits of the city of St. Paul, to carry or wear under his clothes, or concealed about his person, any pistol or pistols, dirk, dagger, sword, slungshot, cross-knuckles, or knuckles of lead, brass or other metal, bowie-knife, dirk-knife or razor, or any other dangerous or deadly weapon. § 2.

Any such weapons or weapons, duly adjudged by the municipal court of said city to have been worn or carried by any person, in violation of the first section of this ordinance, shall be forfeited or confiscated to the said city of St. Paul, and shall be so adjudged. § 3. Any policeman of the city of St. Paul, may, within the limits of said city, without a warrant, arrest any person or persons, whom such policeman may find in the act of carrying or wearing under their clothes, or concealed about

their person, any pistol or pistols, dirk, dagger, sword, slungshot, cross-knuckles, or knuckles of lead, brass or other metal, bowie-knife, dirk-knife or razor, or any other dangerous or deadly weapon, and detain him, her or them in the city jail, until a warrant can be procured, or complaint made for the trial of such person or persons, as provided by the charter of the city of St. Paul, for other offenses under said charter, and for the trial of such person or persons, and for the seizure and confiscation of such of the weapons above referred to, as such person or persons may be found in the act of carrying or wearing under their clothes, or concealed about their persons.

George Brooks Young. General Statutes of the State of Minnesota in Force January 1, 1889 Page 1006, Image 1010 (Vol. 2, 1888) available at The Making of Modern Law: Primary Sources.

Dangerous or Unusual Weapons | Minnesota | 1888

Making, Selling, etc., Dangerous Weapons, §§ 333-334.

§ 333. A person who manufactures, or causes to be manufactured, or sells, or keeps for sale, or offers or gives or disposes of any instrument or weapon of the kind usually known as slung-shot, sand-club, or metal knuckles, or who, in any city of this state, without the written consent of a magistrate, sells or gives any pistol or fire-arm to any person under the age of eighteen years, is guilty of a misdemeanor. Carrying, using, etc., certain Weapons . . . .

§ 334. A person who attempts to use against another, or who, with intent so to use, carries, conceals, or possesses any instrument or weapon of the kind commonly known as a slung-shot, sand-club, or metal knuckles, or a dagger, dirk, knife, pistol or other fire-arm, or any dangerous weapon, is guilty of a misdemeanor.

## **MISSISSIPPI**

1799 Miss. Laws 113, A Law For The Regulation Of Slaves. No Negro or mulatto shall keep or carry any gun, powder, shot, club or other weapon whatsoever, offensive or defensive; but all and every gun, weapon and ammunition found in the possession or custody of any negro or mulatto may be seized by any person . . . every such offender shall have and receive by order of such justice, any number of lashes not exceeding thirty-nine, on his or her bare back, well laid on, for every such offense.

1804 Miss. Laws 90, An Act Respecting Slaves, § 4. No Slave shall keep or carry any gun, powder, shot, club or other weapon whatsoever offensive or defensive, except tools given him to work with . . .

1878 Miss. Laws 175, An Act To Prevent The Carrying Of Concealed Weapons And For Other Purposes, § 1.

That any person not being threatened with or havin good and sufficient reason to apprehend an attack, or traveling (not being a tramp) or setting out on a long journey, or peace officers, or deputies in discharge of their duties, who carries concealed in whole or in part, any bowie knife, pistol, brass knuckles, slung shot or other deadly weapon of like kind or description shall be deemed guilty of a misdemeanor, and on conviction, shall be punished for the first offense by a fine of not less than five dollars nor more than one hundred dollars . . .

## **MISSOURI**

Organic Laws:-Laws of Missouri Territory, (Alphabetically Arranged):-Spanish Regulations for the Allotment of Lands:- Laws of the United States, for Adjusting Titles to Lands, &c. to Which are Added, a Variety of Forms, Useful to Magistrates Page 374, Image 386 (1818) available at The Making of Modern Law: Primary Sources. 1818.

Slaves, § 3. No slave or mulatto whatsoever, shall keep or carry a gun, powder, shot, club or other weapon whatsoever, offensive or defensive; but all and every gun weapon and ammunition found in the possession or custody of any negro or mulatto, may be seized by any person and upon due proof made before any justice of the peace of the district [county] where such seizure shall be, shall by his order be forfeited to the seizer, for his own use, and moreover, every such offender shall have and receive by order of such justice any number of lashes not exceeding thirty nine on his or her bare back well laid on for every such offence. § 4. Every free negro or mulatto, being a housekeeper may be permitted to keep one gun, powder and shot; and all negroes or mulattoes bond or free, living at any frontier plantation, may be permitted to keep and use guns, powder shot and weapons, offensive and defensive, by license from a justice of the peace of the district [county] wherein such plantation lies, to be obtained upon the application of free negroes or mulattoes or of the owners of such as are slaves.

Everett Wilson Pattison, The Revised Ordinance of the City of St. Louis, Together with the Constitution of the United States, and of the State of Missouri; the Charter of the City; and a Digest of the Acts of the General Assembly, Relating to the City Page 491-492, Image 499-500 (1871) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Missouri | 1871

Ordinances of the City of St. Louis, Misdemeanors, §§ 9-10.

§ 9. Hereafter it shall not be lawful for any person to wear under his clothes, or concealed about his person, any pistol, or revolver, colt, billy, slung shot, cross knuckles, or knuckles of lead, brass or other metal, bowie knife, razor, dirk knife, dirk, dagger, or any knife resembling a bowie knife, or any other dangerous or deadly weapon, within the City of St. Louis, without written permission from the Mayor; and any person who shall violate this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than ten nor more than five hundred dollars for each and every offence.

§ 10. Nothing in the preceding section shall be so construed as to prevent any United States, State, county or city officer, or any member of the city government, from carrying or wearing such weapons as may be necessary in the proper discharge of his duties.

1883 Mo. Laws 76, An Act To Amend Section 1274, Article 2, Chapter 24 Of The Revised Statutes Of Missouri, Entitled "Of Crimes And Criminal Procedure"  
§ 1274.

If any person shall carry concealed, upon or about his person, any deadly or dangerous weapon, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill or meetings called under the militia law having upon or about his person any kind of fire arms, bowie knife, dirk, dagger, slung-shot, or other deadly weapon, or shall in the presence of one or more persons shall exhibit and such weapon in a rude, angry or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated or under the influence of intoxicating drinks, or shall directly or indirectly sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction be punished by a fine of not less than twenty-five nor more than two hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

W. J. Connell, The Revised Ordinances of the City of Omaha, Nebraska, Embracing All Ordinances of a General Nature in Force April 1, 1890, Together with the Charter for Metropolitan Cities, the Constitution of the United States and the Constitution of the State of Nebraska Page 344, Image 356 (1890) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Nebraska | 1890

Ordinances of Omaha, Concealed Weapons, § 10.

It shall be unlawful for any person to wear under his clothes, or concealed about his person, any pistol or revolver, colt, billy, slung-shot, brass knuckles or knuckles of lead, dirk, dagger, or any knife resembling a bowie knife, or any other dangerous or deadly weapon within the corporate limits of the city of Omaha. Any person guilty of a violation of this section shall, on conviction, be fined not exceeding one hundred (\$100) dollars for each and every offense; nothing in this section, however, shall be so construed as to prevent the United States Marshals and their deputies, sheriffs and their deputies, regular or special police officers of the city, from carrying or wearing such weapons as may be deemed necessary in the proper discharge of their duties. Provided, however, If it shall be proved from the testimony on the trial of any such case, that the accused was, at the time of carrying any weapon as aforesaid, engaged in the pursuit of lawful business, calling or employment and the circumstances in which he was placed at the time aforesaid were such as to justify a prudent man in carrying the weapon or weapons aforesaid, for the defense of his person, property or family, the accused shall be acquitted.

William K. Amick, The General Ordinances of the City of Saint Joseph (A City of the Second Class) Embracing all Ordinances of General Interest in Force July 15, 1897, together with the Laws of the State of Missouri of a General Nature Applicable to the City of St. Joseph. Compiled and Arranged Page 508, Image 515 (1897) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Missouri | 1897

Concealed Weapons – Carrying of, § 7.

Any person who shall in this city wear under his clothes or carry concealed upon or about his person, or be found having upon or about his person concealed, any pistol or revolver, colt, billy, slung shot, cross knuckles or knuckles of lead, brass or other metal, dirk, dagger, razor, bowie knife, or any knife resembling a bowie knife, or any other dangerous or deadly weapon, shall be deemed guilty of a misdemeanor.

Joplin Code of 1917, Art. 67, § 1201. Missouri. Weapons; Deadly.

If any person shall carry concealed upon or about his person a dangerous or deadly weapon of any kind or description, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, political, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful



purpose other than for militia drill, or meetings called under militia law of this state, having upon or about his person, concealed or exposed, any kind of firearms, bowie knife, spring-back knife, razor, knuckles, bill, sword cane, dirk, dagger, slung shot, or other similar deadly weapons, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have any such weapons in his possession when intoxicated, or directly or indirectly shall sell or deliver, loan or barter, to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall be deemed guilty of a misdemeanor. Provided, that nothing contained in this section shall apply to legally qualified sheriffs, police officers, and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace, nor to persons traveling in a continuous journey peaceably through this state.

1923 Mo. Laws 241-42, An Act to Provide the Exercise of the Police Powers of the State by and through Prohibiting the Manufacture, Possession, Transportation, Sale and Disposition of Intoxicating Liquors. . . § 17.

Sensitive Places and Times | Missouri | 1923

Any person, while in charge of, or a passenger thereon, who shall carry on his person, or in, on, or about, any wagon, buggy, automobile, boat, aeroplane, or other conveyance or vehicle whatsoever, in, or upon which any intoxicating liquor, including wine or beer, is carried, conveyed or transported in violation of any provision of the laws of this state, any revolver, gun or other firearm, or explosive, any bowie knife, or other knife having a blade of more than two and one-half inches in length, any sling shot, brass knucks [sic], billy, club or other dangerous weapon, article or thing which could, or might, be used in inflicting bodily injury or death upon another, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by the imprisonment in the state penitentiary for a term of not less than two years. Provided, that this section shall not apply to any person or persons transporting intoxicating liquor for personal use and not for sale in violation of law. Provided, that this section shall not apply to any person or passenger who did not know that such vehicle or conveyance was being used for unlawful purposes.

## **MONTANA**

1864 Mont. Laws 355, An Act to Prevent the Carrying of Concealed Deadly Weapons in the Cities and Towns of This Territory, § 1.

If any person shall within any city, town, or village in this territory, whether the same is incorporated or not, carry concealed upon his or her person any pistol,



bowie-knife, dagger, or other deadly weapon, shall, on conviction thereof before any justice of the peace of the proper county, be fined in any sum not less than twenty five dollars, nor more than one hundred dollars.

1879 Mont. Laws 359, Offences against the Lives and Persons of Individuals, ch. 4, § 23.

If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and, upon conviction thereof, shall be punished accordingly [death by hanging].

1885 Mont. Laws 74, Deadly Weapons, An Act to Amend § 62 of Chapter IV of the Fourth Division of the Revised Statutes, § 62-63.

Every person in this territory having, carrying, or procuring from another person, any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall in the presence of one or more persons, draw or exhibit any of said deadly weapons in a rude or angry or threatening manner, not in necessary self defense, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, upon conviction thereof in any criminal court in any county in this territory shall be fined in any sum not less than ten dollars nor more than one hundred dollars, or imprisoned in the county jail not less than one month nor more than three months, at the discretion of the court, or by both such fine and imprisonment, together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases; and all fines and forfeitures arising under the provisions of this act shall be paid into the county treasury for school purposes: Provided, that no sheriff, deputy sheriff, constable, marshal, or other peace officer, shall be held to answer, under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned while in the lawful discharge of his or their duties.

1887 Mont. Laws 549, Criminal Laws, § 174.

If any person shall have upon him or her any pistol, gun, knife, dirk-knife, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

## **NEBRASKA**

1858 Neb. Laws 69, An Act To Adopt And Establish A Criminal code For The Territory Of Nebraska, § 135.

And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars. . .

Gilbert B. Colfield, Laws, Ordinances and Rules of Nebraska City, Otoe County, Nebraska Page 36, Image 36 (1872) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Nebraska | 1872

Ordinance No. 7, An Ordinance Prohibiting the Carrying of Fire Arms and Concealed Weapons, § 1.

Be it ordained by the Mayor and Councilmen of the City of Nebraska City, That it shall be, and it is hereby declared to be unlawful for any person to carry, openly or concealed, any musket, rifle, shot gun, pistol, sabre, sword, bowie knife, dirk, sword cane, billy slung shot, brass or other metallic knuckles, or any other dangerous or deadly weapons, within the corporate limits of Nebraska City, Neb; Provided, that nothing herein contained shall prevent the carrying of such weapon by a civil or military officer, or by a soldier in the discharge of his duty, nor by any other person for mere purposes of transportation from one place to another.

W. J. Connell, The Revised Ordinances of the City of Omaha, Nebraska, Embracing All Ordinances of a General Nature in Force April 1, 1890, Together with the Charter for Metropolitan Cities, the Constitution of the United States and the Constitution of the State of Nebraska Page 344, Image 356 (1890) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Nebraska | 1890

Ordinances of Omaha, Concealed Weapons, § 10.

It shall be unlawful for any person to wear under his clothes, or concealed about his person, any pistol or revolver, colt, billy, slung-shot, brass knuckles or knuckles of lead, dirk, dagger, or any knife resembling a bowie knife, or any other dangerous or deadly weapon within the corporate limits of the city of Omaha. Any person guilty of a violation of this section shall, on conviction, be fined not exceeding one hundred (\$100) dollars for each and every offense; nothing in this section, however, shall be so construed as to prevent the United States Marshals and their deputies, sheriffs and their deputies, regular or special police officers of the city, from carrying or wearing such weapons as may be deemed necessary in the proper discharge of their duties. Provided, however, If it shall be proved from

the testimony on the trial of any such case, that the accused was, at the time of carrying any weapon as aforesaid, engaged in the pursuit of lawful business, calling or employment and the circumstances in which he was placed at the time aforesaid were such as to justify a prudent man in carrying the weapon or weapons aforesaid, for the defense of his person, property or family, the accused shall be acquitted.

Compiled Ordinances of the City of Fairfield, Clay County, Nebraska Page 34, Image 34 (1899) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Nebraska | 1899

Ordinance No. 20, An Ordinance to Prohibit the Carrying of Concealed Weapons and Fixing a Penalty for the violations of the same. Be it ordained by the Mayor and Council of the City of Fairfield, Nebraska: § 1.

It shall be unlawful for any person to carry upon his person any concealed pistol, revolver, dirk, bowie knife, billy, sling shot, metal knuckles, or other dangerous or deadly weapons of any kind, excepting only officers of the law in the discharge or their duties; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be subject to the penalty hereinafter provided. § 2. Any such weapon or weapons, duly adjudged by the Police Judge of said city to have been worn or carried by any person in violation of the first section of this ordinance, shall be forfeited or confiscated to the City of Fairfield and shall be so adjudged.

## **NEVADA**

Bonnifield, The Compiled Laws of the State of Nevada. Embracing Statutes of 1861 to 1873, Inclusive Page 563, Image 705 (Vol. 1, 1873) available at The Making of Modern Law: Primary Sources.

Of Crimes and Punishments, §§ 35-36.

§ 35. If any person shall by previous appointment or agreement, fight a duel with a rifle, shotgun, pistol, bowie knife, dirk, smallsword, backsword, or other dangerous weapon, and in doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guiltily of murder in the first degree and upon conviction thereof shall be punished accordingly.

§ 36. Any person who shall engage in a duel with any deadly weapon although no homicide ensue or shall challenge another to fight such duel, or shall send or deliver any verbal or written message reporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the State prison not

less than two nor more than ten years, and shall be incapable of voting or holding any office of trust or profit under the laws of this State.

David E. Baily, The General Statutes of the State of Nevada. In Force. From 1861 to 1885, Inclusive. With Citations of the Decisions of the Supreme Court Relating Thereto Page 1077, Image 1085 (1885) available at The Making of Modern Law: Primary Sources.

Possession by, Use of, and Sales to Minors and Others Deemed Irresponsible | Nevada | 1881

An Act to prohibit the carrying of concealed weapons by minors. § 1.

Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, sword in case, slung shot, or other dangerous or deadly weapon concealed upon his person, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than two hundred (\$200) dollars, or by imprisonment in the county jail not less than thirty days nor more than six months or by both such fine and imprisonment.

## **NEW JERSEY**

The Grants, Concessions, And Original Constitutions Of The Province Of New Jersey Page 289-290 (1881) (1686)

An Act Against Wearing Swords, Etc. Whereas there hath been great complaint by the inhabitants of this Province, that several persons wearing swords, daggers, pistols, dirks, stilettoes, skeines, or any other unusual or unlawful weapons, by reason of which several persons in this Province, receive great abuses, and put in great fear and quarrels, and challenges made, to the great abuse of the inhabitants of this Province. . . And be it further enacted by the authority aforesaid, that no person or persons after publication hereof, shall presume privately to wear any pocket pistol, skeines, stilettoes, daggers or dirks, or other unusual or unlawful weapons within this Province, upon penalty for the first offence five pounds, and to be committed by any justice of the peace, his warrant before whom proof thereof shall be made, who is hereby authorized to enquire of and proceed in the same, and keep in custody till he hath paid the said five pounds, one half to the public treasury for the use of this Province, and the other half to the informer: And if such person shall again offend against this law, he shall be in like manner committed upon proof thereof before any justice of the peace to the common jail, there to remain

till the next sessions, and upon conviction thereof by verdict of twelve men, shall receive judgment to be in prison six month, and pay ten pounds for the use aforesaid. And be it further enacted by the authority aforesaid, that no planter shall ride or go armed with sword, pistol or dagger, upon the penalty of five pounds, to be levied as aforesaid, excepting all officers, civil and military, and soldiers while in actual service, as also all strangers, travelling upon their lawful occasions through this Province, behaving themselves peaceably.

Ordinances of Jersey City, Passed By The Board Of Aldermen since May 1, 1871, under the Act Entitled “An Act to Re-organize the Local Government of Jersey City,” Passed March 31, 1871, and the Supplements Thereto Page 41, Image 41 (1874) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | New Jersey | 1871

An Ordinance To Prevent the Carrying of Loaded or Concealed Weapons within the Limits of Jersey City. The Mayor and Aldermen of Jersey City do ordain as follows: § 1.

That it shall not be lawful for any person or persons (excepting policemen and private watchmen when on duty), within the corporate limits of Jersey City, to carry, have, or keep concealed on his or her person any instrument or weapon commonly known as a slung-shot, billy, sand-club or metal knuckles, and any dirk or dagger (not contained as a blade of a pocket-knife), and loaded pistol or other dangerous weapon, under the penalty of not exceeding twenty dollars for each offense. § 2. That it shall not be lawful for any person or persons (excepting policemen and private watchmen when on duty), within the corporate limits of Jersey City, to carry or wear any sword in a cane, or air-gun, under the penalty of not exceeding twenty dollars for each offense. § 3. Any forfeiture on penalty arising under this ordinance may be recovered in the manner specified by the City Charter, and all persons violating any of the provisions aforesaid shall, upon conviction, stand committed until the same be paid.

Ordinances of Jersey City, Passed By The Board Of Aldermen since May 1, 1871, under the Act Entitled “An Act to Re-organize the Local Government of Jersey City,” Passed March 31, 1871, and the Supplements Thereto Page 86- 87, Image 86-87 (1874) available at The Making of Modern Law: Primary Sources.

Carrying Weapons, Registration and Taxation | New Jersey | 1873

An Ordinance In Relation to the Carrying of Dangerous Weapons. The Mayor and Aldermen of Jersey City do ordain as follows: § 1.

That with the exceptions made in the second section of this ordinance, no person shall, within the limits of Jersey City, carry, have or keep on his or her person concealed, any slung-shot, sand-club, metal knuckles, dirk or dagger not contained as a blade of a pocket knife, loaded pistol or other dangerous weapon. § 2. That policemen of Jersey City, when engaged in the performance of police duty, the sheriff and constables of the County of Hudson, and persons having permits, as hereinafter provided for, shall be and are excepted from the prohibitions of the first section of this ordinance. § 3. The Municipal Court of Jersey City may grant permits to carry any of the weapons named in the first section to such persons as should, from the nature of their profession, business or occupation, or from peculiar circumstances, be allowed so to do; and may, in granting such permits, impose such conditions and restrictions in each case as to the court shall seem proper. All applications for permits shall be made in open court, by the applicant in person, and in all cases the court shall require a written endorsement of the propriety of granting a permit from at least three reputable freeholders; nor shall any such permit be granted to any person until the court is satisfied that such person is temperate, of adult age, and capable of exercising self-control . Permits shall not be granted for a period longer than one year, and shall be sealed by the seal of the court. The possession of a permit shall not operate as an excuse unless the terms of the same are strictly complied with. In cases of emergency, permits may be granted by a single Justice of the Municipal Court, or by the Chief of Police, to be in force not longer than thirty days, but such permit shall not be renewable. §4. That no person shall, within the limits of Jersey City, carry any air gun or any sword cane. § 5. The penalty for a violation of this ordinance shall be a fine not exceeding fifty dollars, or imprisonment in the city prison not exceeding ten days, or both fine and imprisonment not exceeding the aforesaid amount and time, in the discretion of the court.



1905 N.J. Laws 324-25, A Supplement to an Act Entitled “An Act for the Punishment of Crimes,” ch. 172, § 1.

Any person who shall carry any revolver, pistol or other deadly, offensive or dangerous weapon or firearm or any stiletto, dagger or razor or any knife with a blade of five inches in length or over concealed in or about his clothes or person, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not exceeding two hundred dollars or imprisonment at hard labor, not exceeding two years, or both;. . . .

1927 N.J. Laws 742, A Further Supplement to an Act Entitled, “An Act for the Punishment of Crimes,” ch. 321, § 1.

Manufacturing, Inspection and Sale of Gunpowder and Firearms | New Jersey | 1927

No pawnbroker shall hereafter sell or have in his possession for sale or to loan or give away, any machine gun, automatic rifle, revolver, pistol, or other firearm, or other instrument of any kind known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife, stiletto, bomb or other high explosive. Any pawnbroker violating the provisions of this act shall be guilty of a high misdemeanor and punished accordingly.

## **NEW MEXICO**

Charles Nettleton, Laws of the State of New-Jersey Page 474, Image 501 (1821) available at The Making of Modern Law: Primary Sources.

Sentence Enhancement for Use of Weapon | New Jersey | 1799

[An Act to Describe, Apprehend and Punish Disorderly Persons (1799)], § 2.

And whereas diverse ill disposed persons are frequently apprehended, having upon them implements for house-breaking, or offensive weapons, or are found in or upon houses, warehouses, stables, barns or out-houses, areas of houses, coach-houses, smoke-houses, enclosed yards, or gardens belonging to houses, with intent to commit theft, misdemeanors or other offences; and although their evil purposes are thereby manifested, the power of the justices of the peace to demand of them sureties for their good behavior hath not been of sufficient effect to prevent them from carrying their evil purpose into execution; Be it further enacted, That if any person shall be apprehended, having upon him or her any picklock, key, crow, jack, bit or other implement, with an intent to break and enter into any dwelling-house or out-house; or shall have upon him or her any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to assault any person; or shall be found in or upon any dwelling-house, ware-house, stable, barn, coach-house, smoke-house or out-house, or in any enclosed yard or garden, or area belonging to



any house, with an intent to steal any goods or chattels, then he or she shall be deemed and adjudged to be a disorderly person.

1853 N.M. Laws 406, An Act Prohibiting The Carrying Of Weapons Concealed Or Otherwise, § 25.

That from and after the passage of this act, it shall be unlawful for any person to carry concealed weapons on their persons, or any class of pistols whatever, bowie knife, cuchillo de cinto (belt buckle knife), Arkansas toothpick, Spanish dagger, slung shot, or any other deadly weapon, of whatever class or description that may be, no matter by what name they may be known or called under the penalties and punishment which shall hereinafter be described.

Ordinances of Jersey City, Passed By The Board Of Aldermen since May 1, 1871, under the Act Entitled “An Act to Re-organize the Local Government of Jersey City,” Passed March 31, 1871, and the Supplements Thereto Page 41, Image 41 (1874) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | New Jersey | 1871

An Ordinance To Prevent the Carrying of Loaded or Concealed Weapons within the Limits of Jersey City. The Mayor and Aldermen of Jersey City do ordain as follows: § 1.

That it shall not be lawful for any person or persons (excepting policemen and private watchmen when on duty), within the corporate limits of Jersey City, to carry, have, or keep concealed on his or her person any instrument or weapon commonly known as a slung-shot, billy, sand-club or metal knuckles, and any dirk or dagger (not contained as a blade of a pocket-knife), and loaded pistol or other dangerous weapon, under the penalty of not exceeding twenty dollars for each offense. § 2. That it shall not be lawful for any person or persons (excepting policemen and private watchmen when on duty), within the corporate limits of Jersey City, to carry or wear any sword in a cane, or air-gun, under the penalty of not exceeding twenty dollars for each offense. § 3. Any forfeiture on penalty arising under this ordinance may be recovered in the manner specified by the City Charter, and all persons violating any of the provisions aforesaid shall, upon conviction, stand committed until the same be paid.

Mercer Beasley, Revision of the Statutes of New Jersey: Published under the Authority of the Legislature; by Virtue of an Act Approved April 4, 1871 Page 304, Image 350 (1877) available at The Making of Modern Law: Primary Sources. Sentence Enhancement for Use of Weapon | New Jersey | 1877

An Act Concerning Disorderly Persons, § 2.

And whereas, diverse ill-disposed persons are frequently apprehended, having upon them implements for house-breaking, or offensive weapons, or are found in or upon houses, warehouses, stables, barns or out-houses, areas of houses, coach-houses, smoke-houses, enclosed yards, or gardens belonging to houses (as well as places of public resort or assemblage), with intent to commit theft, misdemeanors or other offences; and although their evil purposes are thereby manifested, the power of the justices of the peace to demand of them sureties for their good behavior hath not been of sufficient effect to prevent them from carrying their evil purposes into execution; if any person shall be apprehended, having upon him or her any picklock, key, crow, jack, bit or other implement with an intent to break and enter into any building: or shall have upon him or her any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to assault any person; or shall be found in or near any dwelling house, warehouse, stable, barn, coach-house, smoke-house, or out-house, or in any enclosed yard or garden, or area belonging to any house, or in any place of public resort or assemblage for business, worship, amusement, or other lawful purposes with intent to steal any goods or chattels, then he or she shall be deemed and adjudged a disorderly person.

An Act to Prohibit the Unlawful Carrying and Use of Deadly Weapons, Feb. 18, 1887, reprinted in Acts of the Legislative Assembly of the Territory of New Mexico, Twenty-Seventh Session 55, 58 (1887).

Brandishing, Carrying Weapons, Dangerous or Unusual Weapons, Firing Weapons, Transportation | New Mexico | 1887

§ 8. Deadly weapons, within the meaning of this act, shall be construed to mean all kinds and classes of pistols, whether the same be a revolved, repeater, derringer, or any kind or class of pistol or gun; any and all kinds of daggers, bowie knives, poniards, butcher knives, dirk knives, and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword canes, and any kind of sharp pointed canes; as also slung shots, bludgeons or any other deadly weapons with which dangerous wounds can be inflicted. . . .

## **NEW YORK**

The Colonial Laws Of New York From The Year 1664 To The Revolution, Including The Charters To The Duke Of York, The Commissions And Instructions

To Colonial Governors, The Dukes Laws, The Laws Of The Dongan And Leisler Assemblies, The Charters Of Albany And New York And The Acts Of The Colonial Legislatures From 1691 To 1775 Inclusive Page 687, Image 689 (1894) available at The Making of Modern Law: Primary Sources.

Race and Slavery Based | New York | 1664

Laws of the Colony of New York. And be it further enacted by the authority aforesaid that it shall not be lawful for any slave or slave to have or use any gun, pistol, sword, club or any other kind of weapon whatsoever, but in the presence or by the direction of his her or their Master or Mistress, and in their own ground on Penalty of being whipped for the same at the discretion of the Justice of the Peace before whom such complaint shall come or upon the view of the said justice not exceeding twenty lashes on the bare back for every such offense.

George S. Diossy, The Statute Law of the State of New York: Comprising the Revised Statutes and All Other Laws of General Interest, in Force January 1, 1881, Arranged Alphabetically According to Subjects Page 321, Image 324 (Vol. 1, 1881) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | New York | 1881

Offenses Against Public Decency; Malicious Mischief, and Other Crimes not Before Enumerated, Concealed Weapons, § 9.

Every person who shall within this state use, or attempt to use, or with intent to use against any other person, shall knowingly and secretly conceal on his person, or with like intent shall willfully and furtively possess any instrument or weapon of the kind commonly known as a slung-shot, billy, sand club or metal knuckles, and any dirk shall be deemed guilty of felony, and on conviction thereof may be punished by imprisonment in the state prison, or penitentiary or county jail, for a term not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

George R. Donnan, Annotated Code of Criminal Procedure and Penal Code of the State of New York as Amended 1882-5 Page 172, Image 699 (1885) available at The Making of Modern Law: Primary Sources.

Carrying, Using, Etc., Certain Weapons, § 410.

A person who attempts to use against another, or who, with intent so to use, carries, conceals or possesses any instrument or weapon of the kind commonly known as the slung-shot, billy, sand –club or metal knuckles, or a dagger, dirk or dangerous knife, is guilty of a felony. Any person under the age of eighteen years who shall have, carry or have in his possession in any public street, highway or place in any city of this state, without a written license from a police magistrate of such city, any pistol or other fire-arm of any kind, shall be guilty of a

misdemeanor. This section shall not apply to the regular and ordinary transportation of fire-arms as merchandise, or for use without the city limits. § 411. Possession, Presumptive Evidence. The possession, by any person other than a public officer, of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying, or concealing, or possessing, with intent to use the same in violation of that section.

Charter and Ordinances of the City of Syracuse: Together with the Rules of the Common Council, the Rules and Regulations of the Police and Fire Departments, and the Civil Service Regulations Page 215, Image 216 (1885) available at The Making of Modern Law: Primary Sources.

[Offenses Against the Public Peace and Quiet,] § 7.

Any person who shall carry about his or her person any dirk, bowie knife, sword or spear cane, pistol, revolver, slung shot, jimmy, brass knuckles, or other deadly or unlawful weapon, or shall use any deadly or unlawful weapon, with intent to do bodily harm to any person, shall be subject to a fine of not less than twenty-five nor more than one hundred dollars, or to imprisonment in the penitentiary of the county for not less than thirty days nor longer than three months, or to both such fine and imprisonment.

Montgomery Hunt Throop, The Revised Statutes of the State of New York; As Altered by Subsequent Legislation; Together with the Other Statutory Provisions of a General and Permanent Nature Now in Force, Passed from the Year 1778 to the Close of the Session of the Legislature of 1881, Arranged in Connection with the Same or kindred Subjects in the Revised Statutes; To Which are Added References to Judicial Decisions upon the Provisions Contained in the Text, Explanatory Notes, and a Full and Complete Index Page 2512, Image 677 (Vol. 3, 1882) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | New York | 1866

An Act to Prevent the Furtive Possession and use of slung-shot and other dangerous weapons. Ch. 716, § 1.

Every person who shall within this state use, or attempt to use or with intent to use against any other person shall knowingly and secretly conceal on his person, or with like intent shall willfully and furtively possess any possess any instrument or weapon of the kind commonly known as slung-shot, billy, sand club or metal knuckles, and any dirk or dagger (not contained as a blade of a pocket knife), or sword-cane or air-gun shall be deemed guilty of felony, and on conviction thereof be punished by imprisonment in the state prison, or penitentiary or county jail, for a term not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. § 2. The having possession of any of the

weapons mentioned in the first section of this act by any other than a public officer, willfully and secretly concealed on the person or knowingly and furtively carried thereon, shall be presumptive evidence of so concealing and possessing or carrying the same with the intent to use the same in violation of the provisions of this act.

1900 N.Y. Laws 459, An Act to Amend Section Four Hundred and Nine of the Penal Code, Relative to Dangerous Weapons, ch. 222, § 1.

Possession by, Use of, and Sales to Minors and Others Deemed Irresponsible | New York | 1900

Making, et cetera, dangerous weapons. – A person who manufactures, or causes to be manufactured, or sells or keeps for sale, or offers, or gives, or disposes of any instrument or weapon of the kind usually known as slunghsot, billy, sand-club or metal knuckles, or who, in any city or incorporated village in this state, without the written consent of the police magistrate, sells or gives any pistol or other firearm, to any person under the age of eighteen years or without a like consent sells or gives away any air-gun, or spring-gun, or other instrument or weapon in which the propelling force is a spring or air to any person under the age of twelve years, or who sells or gives away any instrument or weapon commonly known as a toy pistol, in or upon which any loaded or blank cartridges are used or may be used, to any person under the age of sixteen years, is guilty of a misdemeanor.

1911 N.Y. Laws 442, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons. ch. 195, § 1.

Possession by, Use of, and Sales to Minors and Others Deemed Irresponsible | New York | 1911

Section[] eighteen hundred and ninety-six . . . [is] hereby amended . . . § 1896.

Making and disposing of dangerous weapons. A person who manufactures, or causes to be manufactured, or sells or keeps for sale, or offers, or gives, or disposes of any instrument or weapon of the kind usually known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, or metal knuckles, to any person; or a person who offers, sells, loans, leases or gives any gun, revolver, pistol or other firearm or any airgun, spring-gun or other instrument or weapon in which the propelling force is a spring or air or any instrument or weapon commonly known as a toy pistol or in or upon which any loaded or blank cartridges are used, or may be used, or any loaded or blank cartridges or ammunition therefor, to any person under the age of sixteen years, is guilty of a misdemeanor.

1911 N.Y. Laws 442-43, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons. ch. 195, § 1.

Section . . . eighteen hundred and ninety-seven . . . [is] hereby amended to read as follows: § 1897. Carrying and use of dangerous weapons. A person who attempts to use against another, or who carries, or possesses any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles or bludgeon, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly instrument or weapon, is guilty of a felony. Any person under the age of sixteen years, who shall have, carry, or have in his possession, any of the articles named or described in the last section, which is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor. . . . Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor, theretofore issued to him by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance of such city, village or town, shall be guilty of a felony.

1913 N.Y. Laws 1627-30, vol. III, ch. 608, § 1, Carrying and Use of Dangerous Weapons

Carrying Weapons, Dangerous or Unusual Weapons | New York | 1913

§ 1. A person who attempts to use against another, or who carries or possesses, any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bludgeon, bomb or bombshell, or who, with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly instruments or weapon, is guilty of a felony.

1931 N.Y. Laws 1033, An Act to Amend the Penal Law in Relation to Carrying and Use of Glass Pistols, ch. 435, § 1.

Dangerous or Unusual Weapons | New York | 1931

A person who attempts to use against another an imitation pistol, or who carries or possesses any instrument or weapon of the kind commonly known as a black-jack, slungshot, billy, sand club, sandbag, metal knuckles, bludgeon, or who, with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, imitation pistol, machine gun, sawed off shot-gun, or any other dangerous or deadly instrument, or weapon is guilty of a misdemeanor, and if he has been previously convicted of any crime he is guilty of a felony.



## **NORTH CAROLINA**

1858-1859 N.C. Sess. Laws 34-36, Pub. Laws, An Act Entitled Revenue, chap. 25, § 27, pt. 15.

The following subjects shall be annually listed, and be taxed the amounts specified: . . . Every dirk, bowie-knife, pistol, sword-cane, dirk-cane and rifle cane, used or worn about the person of any one at any time during the year, one dollar and twenty-five cents. Arms used for mustering shall be exempt from taxation.

North Carolina: N.C. Sess. Laws (1879) chap. 127, as codified in North Carolina Code, Crim. Code, chap. 25 (1883) § 1005, Concealed weapons, the carrying or unlawfully, a misdemeanor.

If any one, except when on his own premises, shall carry concealed about his person any pistol, bowie knife, dirk, dagger, slungshot, loaded case, brass, iron or metallic knuckles or razor or other deadly weapon or like kind, he shall be guilty of a misdemeanor, and be fined or imprisoned at the discretion of the court. And if anyone not being on his own lands, shall have about his person any such deadly weapon, such possession shall be prima facie evidence of the concealment thereof.

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## **NORTH DAKOTA**

1895 N.D. Rev. Codes 1293, Penal Code, Crimes Against the Public Health and Safety, ch. 40, §§ 7312-13.

§ 7312. Carrying or using slung shot. Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony.

§ 7313. Carrying concealed weapons. Every person who carries concealed about his person any description of firearms, being loaded or partly loaded, or any sharp or dangerous weapon, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

1915 N.D. Laws 96, An Act to Provide for the Punishment of Any Person Carrying Concealed Any Dangerous Weapons or Explosives, or Who Has the Same in His Possession, Custody or Control, unless Such Weapon or Explosive Is Carried in the Prosecution of a Legitimate and Lawful Purpose, ch. 83, §§ 1-3, 5.

§ 1. Any person other than a public officer, who carries concealed in his clothes any instrument or weapon of the kind usually known as a black-jack, slung-shot,



billy, sand club, sand bag, bludgeon, metal knuckles, or any sharp or dangerous weapon usually employed in attack or defense of the person, or any gun, revolver, pistol or other dangerous fire arm loaded or unloaded, or any person who carries concealed nitro-glycerin, dynamite, or any other dangerous or violent explosive, or has the same in his custody, possession or control, shall be guilty of a felony. . . .

## **OHIO**

1788-1801 Ohio Laws 20, A Law Respecting Crimes and Punishments . . . , ch. 6.  
Sentence Enhancement for Use of Weapon | Ohio | 1788

Burglary . . . If the person or persons so breaking and entering any dwelling house, shop, store or vessel as aforesaid, shall commit, or attempt to commit any personal abuse, force, or violence, or shall be so armed with any dangerous weapon or weapons as clearly to indicate a violent intention, he, she or they so offending, upon conviction thereof, shall moreover, forfeit all his, her or their estate, real and personal, to this territory, out of which the party injured shall be recompensed as aforesaid, and the offender shall also be committed to any gaol [jail] in the territory for a term not exceeding forty years.

1859 Ohio Laws 56, An Act to Prohibit the Carrying or Wearing of Concealed Weapons, § 1.

Carrying Weapons | Ohio | 1859

[W]hoever shall carry a weapon or weapons, concealed on or about his person, such as a pistol, bowie knife, dirk, or any other dangerous weapon, shall be deemed guilty of a misdemeanor, and on conviction of the first offense shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not more than thirty days; and for the second offense, not exceeding five hundred dollars, or imprisoned in the county jail not more than three months, or both, at the discretion of the court.

Joseph Rockwell Swan, The Revised Statutes of the State of Ohio, of a General Nature, in Force August 1, 1860. With Notes of the Decisions of the Supreme Court Page 452, Image 464 (1860) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Ohio | 1859

An Act to Prohibit the Carrying or Wearing of Concealed Weapons, §§ 1-2.

§ 1. Be it enacted by the General Assembly of the State of Ohio, that whoever shall carry a weapon or weapons, concealed on or about his person, such as a pistol, bowie knife, dirk, or any other dangerous weapon, shall be deemed guilty of a misdemeanor, and on conviction of the first offense shall be fined not exceeding

two hundred dollars, or imprisoned in the county jail not more than thirty days; and for the second offense, not exceeding five hundred dollars, or imprisoned in the county jail not more than three months, or both, at the discretion of the court. Sec. § 2. If it shall be proved to the jury, from the testimony on the trial of any case presented under the [section of this act banning the carrying of concealed weapons], that the accused was, at the time of carrying any of the weapon or weapons aforesaid, engaged in the pursuit of any lawful business, calling, or employment, and that the circumstances in which he was placed at the time aforesaid were such as to justify a prudent man in carrying the weapon or weapons aforesaid for the defense of his person, property or family, the jury shall acquit the accused.

Michael Augustus Daugherty, The Revised Statutes and Other Acts of a General Nature of the State of Ohio: In Force January 1, 1880 Page 1633, Image 431 (Vol. 2, 1879) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Ohio | 1880

Offences Against Public Peace, § 6892.

Whoever carries any pistol, bowie-knife, dirk, or other dangerous weapon, concealed on or about his person, shall be fined not more than two hundred dollars, or imprisoned not more than five hundred dollars, or imprisoned not more than three months, or both.

## **OKLAHOMA**

1890 Okla. Laws 495, art. 47

Brandishing, Carrying Weapons, Hunting, Possession by, Use of, and Sales to Minors and Others Deemed Irresponsible | Oklahoma | 1890

§ 1. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

§ 2. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

§ 3. It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article.

§ 4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under to other circumstances: Provided, however, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

§ 5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while traveling or removing from one place to another, and not otherwise.

§ 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

§ 8. It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

§ 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

1890 Okla. Sess. Laws 475, Crimes Against The Public Health And Safety, §§ 18-19.

§ 18. Every person who manufactures or causes to be manufactured, or sells or offers or keeps for sale, or gives or disposes of any instrument or weapon of the kind usually known as slung shot, or of any similar kind is guilty of a misdemeanor.

§ 19. Every person who carries upon his person, whether concealed or not or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony.

General Laws Relating to Incorporated Towns of Indian Territory Page 37, Image 33 (1890) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Oklahoma | 1890

Revised Ordinances of the Town of Checotah, Ordinance No. 11, § 3.

To wear or carry any pistol of any kind whatever, or any dirk, butcher knife or bowie knife, or a sword, or a spear in a cane, brass or metal knuckles or a razor, slung shot, sand bag, or a knife with a blade over three inches long, with a spring handle, as a weapon.

Leander G. Pitman, The Statutes of Oklahoma, 1890. (From the Laws Passed by the First Legislative Assembly of the Territory) Page 495-496, Image 511-512 (1891) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Oklahoma | 1891

Concealed Weapons, §§ 1, 2, 4-10.

§ 1. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

§ 2. It shall be unlawful for any person in this territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

§ 4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: Provided, however That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

§ 5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while travelling or removing from one place to another, and not otherwise.

§ 6. Any person violating the provisions of any one of the forgoing sections, shall on the first conviction be adjudged guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail not to exceed thirty days or both at the discretion of the court. On the second and every subsequent conviction, the party offending shall on conviction be fined not less than fifty dollars nor more than two hundred and fifty dollars or be imprisoned in the county jail not less than thirty days nor more than three months or both, at the discretion of the court.

§ 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific

purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

§ 8. It shall be unlawful for any person in this territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

§ 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

§ 10. Any person violating the provisions of section seven, eight, or nine of this article; shall on conviction, be punished by a fine of not less than fifty dollars, nor more than five hundred and shall be imprisoned in the county jail for not less than three nor more than twelve months.

Wilson's Rev. & Ann. St. Okla.(1903) § 583, c. 25.

It shall be unlawful for any person in the territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

## **OREGON**

1885 Or. Laws 33, An Act to Prevent Persons from Carrying Concealed Weapons and to Provide for the Punishment of the Same, §§ 1-2.

§ 1. It shall be unlawful for any person to carry concealed about his person in any manner whatever any revolver, pistol, or other fire-arm, or any knife (other than an ordinary pocket knife), or any dirk or dagger, slung-shot or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

§ 2. Any person violating any of the provisions of section one of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than one hundred days, or by both fine and imprisonment, in the discretion of the court.

Laws of Oregon (1885), An Act to Prevent Persons from Carrying Concealed Weapons, § 1-4, p. 33, as codified in Ore. Code, chap. 8 (1892) § 1969.

It shall be unlawful for any person to carry concealed about his person in any manner whatever any revolver, pistol, or other fire-arm, or any knife (other than an ordinary pocket knife), or any dirk or dagger, slung-shot or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

The Charter of Oregon City, Oregon, Together with the Ordinances and Rules of Order Page 259, Image 261 (1898) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Oregon | 1898

An Ordinance Providing for the Punishment of Disorderly Persons, and Keepers and Owners of Disorderly Houses, § 2.

It shall be unlawful for any person to carry any sling shot, billy, dirk, pistol or any concealed deadly weapon or to discharge any firearms, air gun, sparrow gun, flipper or bean shooter within the corporate limits of the city, unless in self-defense, in protection of property or an officer in the discharge of his duty; provided, however, permission may be granted by the mayor to any person to carry a pistol or revolver when upon proper representation it appears to him necessary or prudent to grant such permission.

1917 Or. Sess. Laws 804-808, An Act Prohibiting the manufacture, sale, possession, carrying, or use of any blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger or stiletto, and regulating the carrying and sale of certain firearms, and defining the duties of certain executive officers, and providing penalties for violation of the provisions of this Act, §§ 7-8.

Carrying Weapons | Oregon | 1917

§ 7. Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver or other firearm, or any instrument or weapon of the kind commonly known as a blackjack, slung-shot, billy, sandclub, sandbag, metal knuckles, bomb or bomb-shell, or any other dangerous or deadly weapon or instrument, is guilty of a felony. The carrying or possession of any of the weapons specified in this section by any person while committing, or attempting or threatening to commit a felony, or a breach of the peace, or any act of violence against the person or property of another, shall be presumptive evidence of carrying or possessing such weapon with intent to use the same in violation of this section.

Any person who violates the provisions of this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than \$50.00 nor more than \$500.00, or by imprisonment in the county jail for not less



than one month nor more than six months, or by imprisonment in the penitentiary for not exceeding five years.

§ 8. Whenever any person shall be arrested and it shall be discovered that such person possesses or carries or has possessed or carried upon his person any loaded pistol, revolver or other firearm, or any weapon named or enumerated in Section 7 of this Act, in violation of any of the sections of this Act, it shall be the duty of the person making the arrest to forthwith lay an information for a violation of said section or sections against the person arrested before the nearest or most accessible magistrate having jurisdiction of the offense, and such magistrate must entertain and examine such information and act thereon in the manner prescribed by law.

Section 11. Any person not a citizen of the United States of America, who shall be convicted of carrying a deadly weapon, as described in Sections 1, 2 and 7 of this Act, shall be guilty of a felony and on conviction thereof shall be punished by imprisonment in the State prison for a period not exceeding five years.

## **PENNSYLVANIA**

1851 Pa. Laws 382, An Act Authorizing Francis Patrick Kenrick, Bishop Of Philadelphia, To Convey Certain Real Estate In The Borough Of York, And A supplement To The Charter Of Said Borough, § 4.

That any person who shall willfully and maliciously carry any pistol, gun, dirk knife, slung shot, or deadly weapon in said borough of York ,shall be deemed guilty of a felon, and being thereof convicted shall be sentenced to undergo an imprisonment at hard labor for a term not less than 6 months nor more than one year and shall give security for future good behavior for such sum and for such time as the court before whom such conviction shall take place may fix . . . .

Laws of the City of Johnstown, Pa., Embracing City Charter, Act of Assembly of May 23, 1889, for the Government of Cities of the Third Class, General and Special Ordinances, Rules of Select and Common Councils and Joint Sessions Page 86, Image 86 (1897) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Pennsylvania | 1897

An Ordinance for the Security of Persons and Property of the Inhabitants of the City of Johnstown; The preservation of the Public Peace and Good Order of the City, and Prescribing Penalties for Offenses Against the Same, § 12.

No person shall willfully carry concealed upon his or her person any pistol, razor, dirk or bowie-knife, black jack, or handy billy, or other deadly weapon, and any person convicted of such offense shall pay a fine of not less than five dollars or more than fifty dollars with costs.



## **RHODE ISLAND**

1893 R.I. Pub. Laws 231, An Act Prohibiting The Carrying Of Concealed Weapons, chap. 1180, § 1.

No person shall wear or carry in this state any dirk, bowie knife, butcher knife, dagger, razor, sword in cane, air gun, billy, brass or metal knuckles, slung shot, pistol or fire arms of any description, or other weapons of like kind and description concealed upon his persons . . . [additional fine provided if intoxicated while concealed carrying].

1893 R.I. Pub. Laws 231, An Act Prohibiting The Carrying Of Concealed Weapons, chap. 1180, §§1-3.

Carrying Weapons, Sentence Enhancement for Use of Weapon | Rhode Island | 1893

§ 1. No person shall wear or carry in this state any dirk, bowie knife, butcher knife, dagger, razor, sword in cane, air gun, billy, brass or metal knuckles, slung shot, pistol or fire arms of any description, or other weapons of like kind and description concealed upon his person: Provided, that officers or watchmen whose duties require them to make arrests or to keep and guard prisoners or property, together with the persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempted from the provisions of this act.

§ 2. Any person convicted of a violation of the provisions of section 1 shall be fined not less than twenty dollars nor more than two hundred dollars, or be imprisoned not less than six months nor more than one year.

§ 3. Whenever any person shall be arrested charged with any crime or misdemeanor, or for being drunk or disorderly, or for any breach of the peace, and shall have concealed upon his person any of the weapons mentioned in section 1, such person, upon complaint and conviction , in addition to the penalties provided in section 2, shall be subject to a fine of not less than five dollars nor more than twenty five dollars, and the confiscation of the weapon so found.

General Laws of the State of Rhode Island and Providence Plantations to Which are Prefixed the Constitutions of the United States and of the State Page 1010-1011, Image 1026-1027 (1896) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Rhode Island | 1896

Offences Against Public Policy, §§ 23, 24, 26.

§ 23. No person shall wear or carry in this state any dirk, bowie-knife, butcher knife, dagger, razor, sword-in-cane, air-gun, billy, brass or metal knuckles, slung-shot, pistol or fire-arms of any description, or other weapons of like kind and description concealed upon his person: provided, that officers or watchmen whose duties require them to make arrests or to keep and guard prisoners or property, together with the persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempted from the provisions of this and the two following sections.

§ 24. Any person convicted of a violation of the provisions of the preceding section shall be fined not less than ten nor more than twenty dollars, or be imprisoned not exceeding three months, and the weapon so found concealed shall be confiscated

....

§ 26. No negative allegations of any kind need be averred or proved in any complaint under the preceding three sections, and the wearing or carrying of such concealed weapons or weapons shall be evidence that the wearing or carrying of the same is unlawful; but the respondent in any such case may show any fact that would render the carrying of the same lawful under said sections.

1908 (January Session) R.I. Pub. Laws 145, An Act in Amendment of section 23 of chapter 283 of the General Laws

Carrying Weapons | Rhode Island | 1908

§ 23. No person shall wear or carry in this state any dirk, dagger, razor, sword-in-cane, bowie knife, butcher knife, or knife of any description having a blade of more than three inches in length, measuring from the end of the handle, where the blade is attached to the end of said blade, any air gun, billy, brass or metal knuckles, slung-shot, pistol or firearms of any description, or other weapons of like kind and description, concealed upon his person: Provided, that officers or watchmen whose duties require them to arrest or to keep and guard prisoners or property, together with the persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempted from the provision of this and the two other following sections.

## **SOUTH CAROLINA**

1880 S.C. Acts 448, § 1, as codified in S.C. Rev. Stat. (1894). § 129 (2472.)

§ 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, not met and sitting in General Assembly, and by the authority of the same, That any person carrying a pistol , dirk, dagger, slung shot, metal knuckles, razor, or other deadly weapon usually used for the infliction of personal injury, concealed about his person shall be guilty of a misdemeanor and upon conviction

thereof, before a Court of competent jurisdiction shall forfeit to the County the weapon so carried concealed and be fined in a sum not more than two hundred dollars, or imprisoned for not more than twelve months, or both, in the discretion of the Court.

§ 2. It shall be the duty of every Trial Justice, Sheriff, Constable, or other peace officer, to cause all persons violating this Act to be prosecuted therefor whenever they shall discover a violation hereof.

1923 S.C. Acts 221

If any person shall knowingly sell, offer for sale, give, or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie knife, dirk, loaded cane or sling shot, he shall be guilty of a misdemeanor. Any person being the parent or guardian, of or attending in loco parentis to any child under the age of twelve years who shall knowingly permit such child to have the possession or custody of, or use in any manner whatever any gun, pistol, or other dangerous firearm, whether such firearm be loaded or unloaded, or any person who shall knowingly furnish such child any firearm, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding Fifty Dollars or imprisoned not exceeding thirty days.

## **SOUTH DAKOTA**

S.D. Terr. Pen. Code (1877), § 457 as codified in S.D. Rev. Code, Penal Code (1903), §§ 470-471.

§ 470. Every person who carries upon his person, whether concealed or not, or uses or attempt to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony.

§ 471. Every person who carries concealed about his person any description of firearms, being loaded or partly loaded, or any sharp or dangerous weapons, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

S.D. Rev. Code, Penal Code 1150 (1903) §§ 470, 471

§ 470. Every person who carries upon his person, whether concealed or not, or uses or attempt to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony.

§ 471. Every person who carries concealed about his person any description of firearms, being loaded or partly loaded, or any sharp or dangerous weapons, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

## TENNESSEE

1837-38 Tenn. Pub. Acts 200-01, An Act to Suppress the Sale and Use of Bowie Knives and Arkansas Tooth Picks in this State, ch 137, § 2.

That if any person shall wear any Bowie knife, Arkansas tooth pick, or other knife or weapon that shall in form, shape or size resemble a Bowie knife or Arkansas toothpick under his clothes, or keep the same concealed about his person, such person shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than two hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the county jail not less than three months and not more than six months.

1837-1838 Tenn. Pub. Acts 200, An Act to Suppress the Sale and Use of Bowie Knives and Arkansas Tooth Picks in this State, ch. 137, § 1.

That if any merchant, . . . shall sell, or offer to sell . . . any Bowie knife or knives, or Arkansas tooth picks . . . such merchant shall be guilty of a misdemeanor, and upon conviction thereof upon indictment or presentment, shall be fined in a sum not less than one hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not less than one month nor more than six months.

1837-1838 Tenn. Pub. Acts 201, An Act to Suppress the Sale and Use of Bowie Knives and Arkansas Tooth Picks in the State, ch. 137, § 4.

That if any person carrying any knife or weapon known as a Bowie knife, Arkansas tooth pick, or any knife or weapon that shall in form, shape or size resemble a Bowie knife, on a sudden rencounter [sic], shall cut or stab another person with such knife or weapon, whether death ensues or not, such person so stabbing or cutting shall be guilty of a felony, and upon conviction thereof shall be confined in the jail and penitentiary house of this state, for a period of time not less than three years, nor more than fifteen years.

Seymour Dwight Thompson, A Compilation of the Statute Laws of the State of Tennessee, of a General and Permanent Nature, Compiled on the Basis of the Code of Tennessee, With Notes and References, Including Acts of Session of 1870-1871 Page 125, Image 794 (Vol. 2, 1873) available at The Making of Modern Law: Primary Sources. [1856]

Offences Against Public Policy and Economy. § 4864.

Any person who sells, loans, or gives, to any minor a pistol, bowie-knife, dirk, Arkansas tooth-pick, hunter's knife, or like dangerous weapon, except a gun for hunting or weapon for defense in traveling, is guilty of a misdemeanor, and shall

be fined not less than twenty-five dollars, and be imprisoned in the county jail at the discretion of the court.

William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, Together with the Acts of the Legislature Relating to the City, with an Appendix Page 190, Image 191 (1863) available at The Making of Modern Law: Primary Sources.

Offences Affecting Public Safety: Carrying Concealed Weapons, § 3.

It shall not be lawful for any person or persons to carry concealed about his or their persons any pistol, Bowie-knife, dirk, or any other deadly weapon; and any person so offending, shall upon conviction thereof before the Recorder, be fined not less than ten nor more than fifty dollars for each and every offence.

William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, from 1826 to 1867, Inclusive, Together with the Acts of the Legislature Relating to the City, with an Appendix Page 44, Image 44 (1867) available at The Making of Modern Law: Primary Sources.

Police Regulations Of The State, Offences Against Public Peace, §§ 4746, 4747, 4753, 4757.

§ 4746. Any person who carries under his clothes or concealed about his person, a bowie-knife, Arkansas tooth-pick or other knife or weapon of like form and shape or size, is guilty of a misdemeanor.

§ 4747. It is a misdemeanor to sell, or offer to sell, or to bring into the State for the purpose of selling, giving away or otherwise disposing of any knife or weapon mentioned in the preceding section.

§ 4753. No person shall ride or go armed to the terror of the people, or privately carry any dirk, large knife, pistol or any dangerous weapon, to the fear or terror of any person.

§ 4757. No person shall either publicly or privately carry a dirk, sword-cane, Spanish stiletto, belt or pocket pistol, except a knife, conspicuously on the strap of a shot-pouch, or on a journey to a place out of his county or State.

William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, from 1826 to 1867, Inclusive, Together with the Acts of the Legislature Relating to the City, with an Appendix Page 50, Image 50 (1867) available at The Making of Modern Law: Primary Sources.

Police Regulations of the State. Selling Liquors or Weapons to Minors. § 4864.

Any person who sells, loans or gives to any minor a pistol, bowie-knife, dirk, Arkansas toothpick, hunter's knife, or like dangerous weapon, except a gun for hunting or weapon for defense in traveling, is guilty of a misdemeanor and shall be

fined not less than twenty-five dollars, and imprisoned in the county jail at the discretion of the court.

William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, from 1826 to 1867, Inclusive, Together with the Acts of the Legislature Relating to the City, with an Appendix Page 44, Image 44 (1867) available at The Making of Modern Law: Primary Sources.

Police Regulations Of the State. Offences Against Public Peace. Concealed Weapons. §§ 4746-4747.

§ 4746. Any person who carries under his clothes or concealed about his person, a bowie-knife, Arkansas tooth-pick or other knife or weapon of like form and shape or size, is guilty of a misdemeanor. Selling such weapons misdemeanor.

§ 4747. It is a misdemeanor to sell, or offer to sell, or to bring into the state for the purpose of selling, giving away or otherwise disposing of any knife or weapon mentioned in the preceding Section.

James H. Shankland Public Statutes of the State of Tennessee, since the Year 1858. Being in the Nature of a Supplement to the Code Page 108, Image 203 (Nashville, 1871) available at The Making of Modern Law: Primary Sources.

Elections.

§ 2. That it shall not be lawful for any qualified voter or other person attending any election in this State, or for any person attending any fair, race course, or other public assembly of the people, to carry about his person, concealed or otherwise, any pistol, dirk, Bowie-knife, Arkansas toothpick, or weapon in form, shape, or size resembling a Bowie knife or Arkansas tooth-pick, or other deadly or dangerous weapon.

§ 3. That all persons convicted under the second section of this act shall be punished by fine of not less than fifty dollars, and by imprisonment, or both, at the discretion of the court.

Tenn. Pub. Acts (1879), chap. 186, as codified in Tenn. Code (1884). 5533: It shall not be lawful for any person to carry, publicly or privately, any dirk, razor concealed about his person, sword cane, loaded cane, slung-shot or brass knucks, Spanish stiletto, belt or pocket pistol, revolver, or any kind of pistol, except the army or navy pistol used in warfare, which shall be carried openly in hand.



William King McAlister Jr., Ordinances of the City of Nashville, to Which are Prefixed the State Laws Chartering and Relating to the City, with an Appendix Page 340-341, Image 345-346 (1881) available at The Making of Modern Law: Primary Sources.

Ordinances of the City of Nashville, Carrying Pistols, Bowie-Knives, Etc., § 1. That every person found carrying a pistol, bowie-knife, dirk-knife, slung-shot, brass knucks or other deadly weapon, shall be deemed guilty of a misdemeanor, and, upon conviction of such first offense, shall be fined from ten to fifty dollars, at the discretion of the court, but upon conviction of every such subsequent offense, shall be fined fifty dollars; Provided, however, that no ordinary pocket knife and common walking-canes shall be construed to be deadly weapons.

Claude Waller, Digest of the Ordinances of the City of Nashville, to Which are Prefixed the State Laws Incorporating, and Relating to, the City, with an Appendix Containing Various Grants and Franchises Page 364-365, Image 372-373 (1893) available at The Making of Modern Law: Primary Sources.

Ordinances of the City of Nashville, § 738.

Every person found carrying a pistol, bowie-knife, dirk-knife, slung-shot, brass knucks, or other deadly weapon, shall be deemed guilty of a misdemeanor, and, upon conviction of such first offense, shall be fined from ten to fifty dollars, at the discretion of the court; but, upon conviction of every subsequent offense, shall be fined fifty dollars; Provided, however, That no ordinary pocket-knife and common walking canes shall be construed to be deadly weapons. . .

## **TEXAS**

1871 Tex. Laws 25, An Act to Regulate the Keeping and Bearing of Deadly Weapons.

§ 1. Be it enacted by the Legislature of the State of Texas, That any person carrying on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purposes of offense or defense, unless he had reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense of the State, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor, and on conviction thereof shall, for the first offense, be punished by fine of not less than twenty-five nor more than one



hundred dollars, and shall forfeit to the county the weapon or weapons so found on or about his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not exceeding sixty days; and in every case of fine under this section the fined imposed and collected shall go into the treasury of the county in which they may have been imposed; provided, that this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the State from keeping or carrying arms with their baggage; provided further, that members of the Legislature shall not be included under the term "civil officers" as used in this act.

§ 2. Any person charged under the first section of this act, who may offer to prove, by way of defense, that he was in danger of an attack on his person, or unlawful interference with his property, shall be required to show that such danger was immediate and pressing, and was of such a nature as to alarm a person of ordinary courage; and that the weapon so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a legal defense.

Tex. Act of Apr. 12, 1871, as codified in Tex. Penal Code (1879).  
Art. 163.

If any person other than a peace officer, shall carry any gun, pistol, bowie knife, or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within the distance of one-half mile of any poll or voting place, he shall be punished as prescribed in article 161 of the code. Art. 318. If any person in this state shall carry on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword cane, spear, brass-knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by fine . . . in addition thereto, shall forfeit to the county in which he is convicted, the weapon or weapons so carried.

1897 Tex. Gen. Laws 221, An Act To Prevent The Barter, Sale And Gift Of Any Pistol, Dirk, Dagger, Slung Shot, Sword Cane, Spear, Or Knuckles Made Of Any

Metal Or Hard Substance To Any Minor Without The Written Consent Of The Parent Or Guardian Of Such Minor. . . , chap. 155.

That if any person in this State shall knowingly sell, give or barter, or cause to be sold, given or bartered to any minor, any pistol, dirk, dagger, slung shot, sword-cane, spear or knuckles made of any metal or hard substance, bowie knife or any other knife manufactured or sold for the purpose of offense or defense, without the written consent of the parent or guardian of such minor, or of someone standing in lieu thereof, he shall be punished by fine of not less then twenty-five nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or by both such fine and imprisonment and during the time of such imprisonment such offender may be put to work upon any public work in the county in which such offense is submitted.

Theodore Harris, Charter and Ordinances of the City of San Antonio. Comprising All Ordinances of a General Character in Force August 7th, Page 220, Image 225 (1899) available at The Making of Modern Law: Primary Sources.

Brandishing | Texas | 1899

Ordinances of the City of San Antonio, Ordinances, ch. 22, § 4.

If any person shall, within the city limits, draw any pistol, gun, knife, sword-cane, club or any other instrument or weapon whereby death may be caused, in a threatening manner, or for the purpose of intimidating others, such person shall be deemed guilty of an offense.

## **UTAH**

Dangerous and Concealed Weapon, Feb. 14, 1888, reprinted in The Revised Ordinances Of Salt Lake City, Utah 283 (1893) (Salt Lake City, Utah). § 14.

Any person who shall carry and slingshot, or any concealed deadly weapon, without the permission of the mayor first had and obtained, shall, upon conviction, be liable to a fine not exceeding fifty dollars.

Chapter 5: Offenses Against the Person, undated, reprinted in The Revised Ordinances Of Provo City, Containing All The Ordinances In Force 105, 106-7 (1877) (Provo, Utah).

§ 182: Every person who shall wear, or carry upon his person any pistol, or other firearm,

slungshot, false knuckles, bowie knife, dagger or any other dangerous or deadly weapon, is guilty of an offense, and liable to a fine in any sum not exceeding twenty-five dollars; Provided, that nothing in this section, shall be construed to

apply to any peace officer, of the United States, the Territory of Utah, or of this city.<sup>2</sup>

## **VERMONT**

Ordinances of the City of Barre, Vermont

Carrying Weapons, Firing Weapons | Vermont | 1895

CHAPTER 16, § 18.

No person, except on his own premises, or by the consent and permission of the owner or occupant of the premises, and except in the performance of some duty required by law, shall discharge any gun, pistol, or other fire arm loaded with ball or shot, or with powder only, or firecrackers, serpent, or other preparation whereof gunpowder or other explosive substance is an ingredient, or which consists wholly of the same, nor shall make any bonfire in or upon any street, lane, common or public place within the city, except by authority of the city council.

CHAPTER 38, SEC. 7. No person shall carry within the city any steel or brass knuckles, pistol, slung shot, stiletto, or weapon of similar character, nor carry any weapon concealed on his person without permission of the mayor or chief of police in writing.<sup>3</sup>

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<sup>2</sup> See [http://www.supremecourt.gov/DocketPDF/18/18-280/99640/20190514123503867\\_Charge%20Appendix.pdf](http://www.supremecourt.gov/DocketPDF/18/18-280/99640/20190514123503867_Charge%20Appendix.pdf).

<sup>3</sup> See [http://www.supremecourt.gov/DocketPDF/18/18-280/99640/20190514123503867\\_Charge%20Appendix.pdf](http://www.supremecourt.gov/DocketPDF/18/18-280/99640/20190514123503867_Charge%20Appendix.pdf).

## VIRGINIA

Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force; with a New and Complete Index. To Which are Prefixed the Declaration of Rights, and Constitution, or Form of Government Page 187, Image 195 (1803) available at The Making of Modern Law: Primary Sources.

Race and Slavery Based | Virginia | 1792

[An Act to Reduce into one, the Several Acts Concerning Slaves, Free Negroes, and Mulattoes (1792),] §§ 8-9.

§8. No negro or mulatto whatsoever shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, but all and every gun, weapon, and ammunition found in the possession or custody of any negro or mulatto, may be seized by any person, and upon due proof thereof made before any Justice of the Peace of the County or Corporation where such seizure shall be, shall by his order be forfeited to the seizer for his own use ; and moreover, every such offender shall have and receive by order of such Justice, any number of lashes not exceeding thirty-nine, on his or her bare back, well laid on, for every such offense.

§ 9. Provided, nevertheless, That every free negro or mulatto, being a house-keeper, may be permitted to keep one gun, powder and shot; and all negroes and mulattoes, bond or free, living at any frontier plantation, may be permitted to keep and use guns, powder, shot, and weapons offensive or defensive, by license from a Justice of Peace of the County wherein such plantation lies, to be obtained upon the application of free negroes or mulattoes, or of the owners of such as are slaves.

The Code of Virginia: With the Declaration of Independence and the Constitution of the United States; and the Constitution of Virginia Page 897, Image 913 (1887) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Virginia | 1887

Offences Against the Peace, § 3780. Carrying Concealed Weapons, How Punished. Forfeiture and Sale of Weapons. If any person carry about his person, hid from common observation, any pistol, dirk, bowie-knife, razor, slung-shot, or any weapon of the like kind, he shall be fined not less than twenty nor more than one hundred dollars, and such pistol, dirk, bowie-knife, razor, slung-shot, or any weapon of the like kind, shall be forfeited to the commonwealth and may be seized by an officer as forfeited; and upon the conviction of the offender the same shall be sold and the proceeds accounted for and paid over as provided in section twenty-one hundred and ninety: Provided, that this section shall not apply to any police officer, town or city sergeant, constable, sheriff, conservator of the peace, or collecting officer, while in the discharge of his official duty.

## **WASHINGTON**

1854 Wash. Sess. Law 80, An Act Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. 2, § 30.

Brandishing | Washington | 1854

Every person who shall, in a rude, angry, or threatening manner, in a crowd of two or more persons, exhibit any pistol, bowie knife, or other dangerous weapon, shall on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

1859 Wash. Sess. Laws 109, An Act Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. 2, § 30.

Brandishing | Washington | 1859

Every person who shall, in a rude, angry or threatening manner, in a crowd of two or more persons, exhibit any pistol, bowie knife or other dangerous weapon, shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

1869 Wash. Sess. Laws 203-04, An Act Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. 2, § 32.

Brandishing | Washington | 1869

Every person who shall, in a rude, angry or threatening manner, in a crowd of two or more persons, exhibit any pistol, bowie knife, or other dangerous weapon, shall on conviction thereof, be imprisoned in the county jail not exceeding one year and be fined in any sum not exceeding five hundred dollars.

1881 Wash. Code 181, Criminal Procedure, Offenses Against Public Policy, ch. 73, § 929.

Carrying Weapons | Washington | 1881

If any person carry upon his person any concealed weapon, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days[.]

1881 Wash. Sess. Laws 76, An Act to Confer a City Govt. on New Tacoma, ch. 6, § 34, pt. 15.

Carrying Weapons | Washington | 1881

[T]o regulate the transportation, storage and sale of gunpowder, giant powder, dynamite, nitro-glycerine, or other combustibles, and to provide or license magazines for the same, and to prevent by all possible and proper means, danger or

risk of injury or damages by fire arising from carelessness, negligence or otherwise . . . to regulate and prohibit the carrying of deadly weapons in a concealed manner; to regulate and prohibit the use of guns, pistols and firearms, firecrackers, and detonation works of all descriptions[.]

William Lair Hill, Ballinger's Annotated Codes and Statutes of Washington, Showing All Statutes in Force, Including the Session Laws of 1897 Page 1956, Image 731 (Vol. 2, 1897) available at The Making of Modern Law: Primary Sources.

Brandishing | Washington | 1881

Flourishing Dangerous Weapon, etc. Every person who shall in a manner likely to cause terror to the people passing, exhibit or flourish, in the streets of an incorporated city or unincorporated town, any dangerous weapon, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any sum not exceeding twenty-five dollars. Justices of the peace shall have exclusive original jurisdiction of all offenses arising under the last two preceding sections.

1883 Wash. Sess. Laws 302, An Act to Incorporate the City of Snohomish, ch. 6, § 29, pt. 15.

Carrying Weapons | Washington | 1883

[The city has power] to regulate and prohibit the carrying of deadly weapons in a concealed manner; to regulate and prohibit the use of guns, pistols, and fire-arms, fire crackers, bombs and detonating works of all descriptions . . . .

Albert R. Heilig, Ordinances of the City of Tacoma, Washington Page 333-334, Image 334-335 (1892) available at The Making of Modern Law: Primary Sources. Carrying Weapons | Washington | 1892

Ordinances of the City of Tacoma, An Ordinance Defining Disorderly Persons and Prescribing the Punishment for Disorderly Conduct Within the City of Tacoma. All persons (except police officers and other persons whose duty it is to execute process or warrants or make arrests) who shall carry upon his person any concealed weapon consisting of a revolver, pistol or other fire arms or any knife (other than an ordinary pocket knife) or any dirk or dagger, sling shot or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

Rose M. Denny, The Municipal Code of the City of Spokane, Washington. Comprising the Ordinances of the City (Excepting Ordinances Establishing Street Grades) Revised to October 22, 1896 Page 309-310, Image 315-316 (1896) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Washington | 1896

Ordinances of Spokane, An Ordinance to Punish the Carrying of Concealed Weapons within the City of Spokane, § 1.

If any person within the City of Spokane shall carry upon his person any concealed weapon, consisting of either a revolver, pistol or other fire-arms, or any knife (other than an ordinary pocket knife) or any dirk or dagger, sling-shot or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty dollars, nor more than one hundred dollars and costs of prosecution, and be imprisoned until such fine and costs are paid; provided, that this section shall not apply to police officers and other persons whose duty is to execute process or warrants or make arrests, or persons having a special written permit from the Superior Court to carry weapons

Richard Achilles Ballinger, Ballinger's Annotated Codes and Statutes of Washington: Showing All Statutes in Force, Including the Session Laws of 1897 Page 1956-1957, Image 731-732 (Vol. 2, 1897) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Washington | 1897

Carrying Concealed Weapons, § 7084.

If any person shall carry upon his person any concealed weapon, consisting of either a revolver, pistol, or other fire-arms, or any knife, (other than an ordinary pocket knife), or any dirk or dagger, sling-shot, or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty dollars nor more than one hundred dollars, or imprisonment in the county jail not more than thirty days, or by both fine and imprisonment, in the discretion of the court: Provided, That this section shall not apply to police officers and other persons whose duty it is to execute process or warrants or make arrests.



**WEST VIRGINIA**

1882 W. Va. Acts 421–22

Carrying Weapons | West Virginia | 1882

If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the indictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was, in good faith, carrying such weapon for self-defense and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be construed as to prevent any officer charged with the execution of the laws of the state from carrying a revolver or other pistol, dirk or bowie knife.

1891 W. Va. Code 915, Of Offences Against the Peace, ch. 148, § 7.

Carrying Weapons | West Virginia | 1891

If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises,

any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the indictment he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was in good faith, carrying such weapon for self-defense and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be so construed as to prevent any officer charged with the execution of the laws of the State, from carrying a revolver or other pistol, dirk or bowie knife.

1925 W.Va. Acts 25-30, 1st Extraordinary Sess., An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace; Providing for the Granting and Revoking of Licenses and Permits Respecting the Use, Transportation and Possession of Weapons and Fire Arms. . . , ch. 3, § 7, pt. a. Carrying Weapons, Possession by, Use of, and Sales to Minors and Others Deemed Irresponsible, Registration and Taxation | West Virginia | 1925

§ 7 (a). If any person, without a state license therefor, carry about his person any revolver or other pistol, dirk, bowie-knife, slung shot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor and upon conviction thereof be confined in the county jail for a period of not less than six nor more than twelve months for the first offense; but upon conviction of the same person for the second offense in this state, he shall be guilty of a felony and be confined in the penitentiary not less than one or more than five years, and in either case fined not less than fifty nor more than two hundred dollars, in the discretion of the court. . . .

## WISCONSIN

1883 Wis. Sess. Laws 713, An Act to Revise, consolidate And Amend The Charter Of The City Of Oshkosh, The Act Incorporating The City, And The Several Acts Amendatory Thereof, chap. 6, § 3, pt. 56.

To regulate or prohibit the carrying or wearing by any person under his clothes or concealed about his person any pistol or colt, or slung shot, or cross knuckles or knuckles of lead, brass or other metal or bowie knife, dirk knife, or dirk or dagger, or any other dangerous or deadly weapon and to provide for the confiscation or sale of such weapon.

## **WYOMING**

1884 Wyo. Sess. Laws, chap. 67, § 1, as codified in Wyo. Rev. Stat., Crimes (1887): Exhibiting deadly weapon in angry manner. § 983.

Whoever shall, in the presence of one or more persons, exhibit any kind of fire-arms, Bowie Knife, dirk, dagger, slung-shot or other deadly weapon, in a rude, angry or threatening manner not necessary to the defense of his person, family or property, shall be deemed guilty of misdemeanor, and on conviction thereof, shall be punished by a fine not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail not exceeding six months . . . .

Wyo. Comp. Laws (1876) chap. 35 § 127, as codified in Wyo. Rev. Stat., Crimes (1887) Having possession of offensive weapons. § 1027.

If any person or persons have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.

A. McMicken, City Attorney, The Revised Ordinances of the City of Rawlins, Carbon County, Wyoming Page 131-132; Image 132-133 (1893) available at The Making of Modern Law: Primary Sources.

Carrying Weapons | Wyoming | 1893

Revised Ordinances of the City of Rawlins, Article VII, Carrying Firearms and Lethal Weapons, § 1.

It shall be unlawful for any person in said city to keep or bear upon the person any pistol, revolver, knife, slungshot, bludgeon or other lethal weapon, except the officers of the United States, of the State of Wyoming, of Carbon County and of the City of Rawlins. § 2. Any person convicted of a violation of the preceding section shall be fined not exceeding one hundred dollars, or imprisoned in the city jail not exceeding thirty days. § 3. Persons not residing in said city shall be notified of this Ordinance by the police or any citizen, and after thirty minutes from the time of notification, shall be held liable to the penalties of this article, in case of its violation. § 4. The city marshal and policemen of the city shall arrest, without warrant, all persons found violating the provisions of this article, and are hereby authorized to take any such weapon from the person of the offender and to imprison the offender for trial, as in case of violations of other Ordinances of said city.

SOURCE: <https://firearmslaw.duke.edu/repository/search-the-repository/>

## **EXHIBIT F**

EXHIBIT F

TRAP GUN RESTRICTIONS<sup>1</sup>

**MARYLAND:**

1910 Md. Laws 521, § 16c.

Sensitive Places and Times | Maryland | 1910

§ 16c. That it shall be unlawful for any person to hunt, pursue or kill any of the birds or animals named in Section 12, 13, 14 and 14A of this Act, or any insectivorous birds (excepting English sparrows), in Allegany County on Sunday, or on election days, and it shall be prima facie evidence of a violation of this Act if any person is found in the fields or woods with on a gun on Sunday or on election days, or to hunt or kill in any trap or destroy any of the birds . . .

**MICHIGAN:**

1875 Mich. Pub. Acts 136, An Act To Prevent The Setting Of Guns And Other Dangerous Devices, § 1.

Dangerous or Unusual Weapons | Michigan | 1875

[I]f any person shall set any spring or other gun, or any trap or device operating by the firing or explosion of gunpowder or any other explosive, and shall leave or permit the same to be left, except in the immediate presence of some competent person, he shall be deemed to have committed a misdemeanor; and the killing of any person by the firing of a gun or device so set shall be deemed to be manslaughter.

1931 Mich. Pub. Acts 671, The Michigan Penal Code, ch. 37, § 236.

Dangerous or Unusual Weapons | Michigan | 1931

Setting spring guns, etc.—Any person who shall set any spring or other gun, or any trap or device operating by the firing or explosion of gunpowder or any other explosive, and shall leave or permit the same to be left, except in the immediate presence of some competent person, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than one year, or by a fine of not more than five hundred dollars, and the killing of any person by the firing of a gun or device so set shall be manslaughter.

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<sup>1</sup> Further research may yield additional laws regulating trap guns.

### **MINNESOTA:**

The Statutes at Large of the State of Minnesota: Comprising the General Statutes of 1866 as Amended by Subsequent Legislation to the Close of the Session of 1873: Together with All Laws of a General Nature in Force, March 7, A.D. 1873 with References to Judicial Decisions of the State of Minnesota, and of Other States Whose Statutes are Similar to Which are Prefixed the Constitution of the United States, the Organic Act, the Act Authorizing a State Government, and the Constitution of the State of Minnesota Page 993, Image 287 (Vol. 2, 1873) available at The Making of Modern Law: Primary Sources.

Dangerous or Unusual Weapons | Minnesota | 1873

Of Crimes and Their Punishment, Setting Spring Guns Unlawful, § 64-65.

§ 64. The setting of a so-called trap or spring gun, pistol, rifle, or other deadly weapon in this state is hereby prohibited and declared to be unlawful.

§ 65. Any person offending against the foregoing section shall be punished as follows: If no injury results therefrom to any person, the person so offending shall be punished by imprisonment in the county jail of the proper county for a period not less than six months, or by fine not exceeding five hundred dollars, or by both fine and imprisonment, at the discretion of the court. If death results to any human being from the discharge of a weapon so unlawfully set, the person so offending shall, upon conviction thereof, be punished by imprisonment in the state prison for a term not exceeding fifteen nor less than ten years. If any person is injured, but not fatally, by the discharge of any weapon so unlawfully set, the person so offending, upon conviction thereof, shall be punished by imprisonment in the state prison for a term not exceeding five years, in the discretion of the court.

### **MISSOURI:**

“Shot by a Trap-Gun,” The South Bend Tribune, Feb. 11, 1891: “Chillicothe, Mo., Feb. 11 – In the circuit court George Dowell, a young farmer, was fined \$50 under an old law for setting a trap-gun. Dowell set the gun in his corn-crib to catch a thief, but his wife was the first person to visit the crib and on opening the door was shot dead.”<sup>2</sup>

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<sup>2</sup> See <https://bit.ly/3CtZsfk>.

**NEW HAMPSHIRE:**

1915 N.H. Laws 180-81, An Act to Revise and Amend the Fish and Game Laws, ch. 133, pt. 2, § 18.

Dangerous or Unusual Weapons | New Hampshire | 1915

A person who violates a provision of this part is guilty of a misdemeanor and shall be fined as follows . . . [p]rovided, however, that a person violating the prohibition against setting a spring gun the object of which is to discharge a firearm, shall be fined not more than five hundred dollars nor less than fifty dollars, and shall be liable for twice the amount of the damage caused by his act, to be recovered by the person sustaining the injury or loss.

**NEW JERSEY:**

1763-1775 N.J. Laws 346, An Act for the Preservation of Deer and Other Game, and to Prevent Trespassing with Guns, ch. 539, § 10.

Dangerous or Unusual Weapons | New Jersey | 1771

And Whereas a most dangerous Method of setting Guns has too much prevailed in this Province, Be it Enacted by the Authority aforesaid, That if any Person or Persons within this Colony shall presume to set any loaded Gun in such Manner as that the same shall be intended to go off or discharge itself, or be discharged by any String, Rope, or other Contrivance, such Person or Persons shall forfeit and pay the Sum of Six Pounds; and on Non-payment thereof shall be committed to the common Gaol of the County for Six Months.

**NEW YORK:**

“The Man Trap,” The Buffalo Commercial, Nov. 1, 1870: “Coroner Flynn and the jury previously impaneled yesterday morning concluded the inquest on the body of George Tweedle, the burglar, who was shot by the trap-gun in the shop of Joseph J. Agostino . . . . A Springfield musket was fastened to the sill, inside, with the muzzle three inches from the shutter. The other end of the barrel rested on a block of wood, and one end of a string was tied to the hammer, passed over a small pulley, and the other end fastened to the shutter, so that, on opening the latter, the discharge would follow. . . . The jury retired, and in a short time returned with a verdict setting forth the cause of death to have been a musket shot wound from a weapon placed as a trap by Joseph D. Agostino. As there is a statute against the use of such infernal machines, which might cause loss of life to some innocent



person, the jury censured Agostino. He will not be released, however, but will be held under \$2,000 bail.”<sup>3</sup>

### **NORTH DAKOTA:**

1891 N.D. Laws 193, An Act to Amend Sections 1 and 2 of Chapter 63 of the General Laws of 1883, ch. 70, § 1.

Dangerous or Unusual Weapons | North Dakota | 1891

That it shall be unlawful for any person or persons to kill, ensnare or trap in any form or manner, or by any device whatever, or for any purpose, any buffalo, elk, deer, antelope or mountain sheep between the 1st day of January and the 1st day of September of each and every year. And it shall be unlawful for any person or persons, at any time, to use or employ any hound or dogs of any kind in running or driving any buffalo, elk, deer, antelope or mountain sheep, or to set any gun or guns or gun trap to be discharged upon or by, any buffalo, elk, deer, antelope or mountain sheep as driven or pursued in any manner whatever.

The Revised Codes of the State of North Dakota 1895 Together with the Constitution of the United States and of the State of North Dakota with the Amendments Thereto Page 1259, Image 1293 (1895) available at The Making of Modern Law: Primary Sources.

Dangerous or Unusual Weapons | North Dakota | 1895

Setting Spring Gun, Trap or Device. Every person who sets any spring or other gun or trap or device operating by the firing or exploding of gunpowder or any other explosive, and leaves or permits the same to be left, except in the immediate presence of some competent person, shall be deemed to have committed a misdemeanor; and the killing of any person by the firing of a gun or other device so set shall be deemed to be manslaughter in the first degree.

### **OREGON:**

1925 Or. Laws 42, An Act Prohibiting the Placing of Spring-Guns or Set-Guns; and Providing a Penalty Therefor, ch. 31, §§ 1-2.

Dangerous or Unusual Weapons | Oregon | 1925

§ 1. It shall be unlawful for any person to place or set any loaded spring-gun or set-gun, or any gun or firearm or other device of any kind designed for containing or firing explosives in any place whatsoever where the same may be fired, exploded or discharged by the contract of any person or animal with any string, wire, rod,

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<sup>3</sup> See <https://bit.ly/3yUSGNF>.

stick, spring or other contrivance affixed thereto or connected therewith or with the trigger thereof.

§ 2. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment; provided, however, that this act shall not apply to any loaded spring-gun or set-gun or firearm or any device placed for the purpose of destroying gophers, moles or other burrowing rodents.

### **RHODE ISLAND:**

1890 R.I. Pub. Laws 17, An Act In Amendment Of And IN Addition to Chapter 94 Of The Public Statutes Of Birds, § 6;

1892 R.I. Pub. Laws 14, An Act In Amendment Of Chapter 92 Of The Public Statutes, Entitled “Of Firearms And Fireworks, § 6.

Hunting | Rhode Island | 1890, 1892

§ 6. Every person who shall at any time of year, take, kill or destroy any quail or partridge, by means of any trap, snare, net or spring, or who shall construct, erect, set, repair, maintain or tend any trap, snare, net, or spring for the purpose of taking, killing or destroying any quail or partridge, or who shall shoot any water fowl by means or by the use of any battery, swivel, punt or pivot gun, shall be fined for each offence, twenty dollars. Provided, however, that at such seasons as the taking, killing or destroying of such birds is prohibited by this chapter, any person may snare on his own land.

### **SOUTH CAROLINA:**

Edmund William McGregor Mackey, The Revised Statutes of the State of South Carolina, Prepared by Commissioners under an Act of the General Assembly, Approved March 9, 1869, to Which is Prefixed the Constitution of the United States and the Constitution of South Carolina Page 404, Image 482 (1873) available at The Making of Modern Law: Primary Sources.

Hunting | South Carolina | 1855

Hunting, General Provisions, § 21.

That it shall not be lawful for any non-resident of this State to use a gun, set a trap or decoy, or to employ any other device for killing or taking deer, turkeys, ducks or other game, not to set a trap, seine, or net, or draw or use the same, or any other contrivance for taking or killing fish, within the territorial limits of this State.

1931 S.C. Acts 78, An Act Declaring it unlawful for any person, firm, or corporation to place a loaded trap gun, spring gun, or any like devise in any building, or in any place, and providing punishment for the violation thereof: § 1.

Dangerous or Unusual Weapons | South Carolina | 1931

Be it enacted by the General Assembly of the State of South Carolina: That it shall be unlawful for any person, firm, or corporation to construct, set, or place a loaded trap gun, spring gun, or any like device in any manner in any building, or in any place within this State, and any violation to the provisions of this Act shall be deemed a misdemeanor and punished by fine of not less than One Hundred (\$100.00) Dollars and not more than Five Hundred (\$500.00) Dollars, or by imprisonment of not less than thirty (30) days nor more than one (1) year, or by both fine and imprisonment, in the discretion of the Court.

### **SOUTH DAKOTA:**

1909 S.D. Sess. Laws 450, An Act for the Preservation, Propagation, Protection, Taking, Use and Transportation of Game and Fish and Establishing the Office of State Game Warden and Defining His Duties, ch. 240, §§ 21-22.

Hunting | South Dakota | 1909

§ 21. No person shall at any time catch, take or kill any of the birds or animals mentioned in this chapter in any other manner than by shooting them with a gun held to the shoulder of the person discharging the same.

§ 22. No person shall at any time set, lay or prepare or have in possession, any trap, snare, artificial light, net, bird line, swivel gun or set gun or any contrivance whatever for the purpose of catching, taking or killing any of the same animals or birds in this chapter mentioned, except that decoys and stationary blinds may be used in hunting wild geese, brant and ducks. The use of rifles in the hunting of said birds is prohibited.

### **UTAH:**

An Act in relation to Crimes and Punishment, Ch. XXII, Title VII, Sec. 102, in Acts, Resolutions and Memorials Passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah 59 (Henry McEwan 1866).

Sentence Enhancement for Use of Weapon | Utah | 1865

§ 102. If any person maliciously injure, deface or destroy any building or fixture attached thereto, or wilfully and maliciously injure, destroy or secrete any goods, chattels or valuable paper of another, or maliciously, prepare any dead fall, or dig any pit, or set any gun, or arrange any other trap to injure another's person or

property, he shall be imprisoned not more than one year, or fined not exceeding five hundred dollars, or both fined and imprisoned at the discretion of the court; and is liable to the party injured in a sum equal to three times the value of the property so destroyed or injured or damage sustained, in a civil action.

1901 Utah Laws 97-98, An Act Defining an Infernal Machine, and Prescribing Penalties for the Construction or Contrivance of the Same, or Having Such Machine in Possession, or Delivering Such Machine to Any Person . . . , ch. 96, §§ 1-3. Dangerous or Unusual Weapons | Utah | 1901

§ 1. Infernal machine defined. That an infernal machine is any box, package, contrivance or apparatus, containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, or loaded pistol or gun or other dangerous or harmful weapon or thing constructed, contrived or arranged so as to explode, ignite or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled or open, or after the lapse of time, or under conditions, or in a manner calculated to endanger health, life, limb or property.

§ 2. That every person who delivers or causes to be delivered, to any express or railway company or other common carrier to any person any infernal machine, knowing it to be such, without informing such common carrier or person of the nature thereof, or sends the same through mail, or throws or places the same on or about the premises or property of another, or in any place where another may be injured thereby, in his person or property, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not exceeding twenty-five years.

§ 3. Penalty for constructing or having in possession – That every person who knowingly constructs or contrives any infernal machine, or with intent to injure another in his person or property, has any infernal machine in his possession, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not exceeding five years.

### **VERMONT:**

1884 Vt. Acts & Resolves 74, An Act Relating To Traps, § 1  
Dangerous or Unusual Weapons | Vermont | 1884

A person who sets a spring gun trap, or a trap whose operation is to discharge a gun or firearm at an animal or person stepping into such trap, shall be fined not less than fifty nor more than five hundred dollars, and shall be further liable to a person suffering damage to his own person or to his domestic animals by such traps, in a civil action, for twice the amount of such damage. If the person injured dies, his

personal representative may have the action, as provided in sections two thousand one hundred and thirty-eight and two thousand one hundred and thirty-nine of the Revised Laws.

1912 Vt. Acts and Resolves 261

Dangerous or Unusual Weapons | Vermont | 1912

. . . and provided further that a person violating the prohibition against setting a spring gun or other device the object of which is to discharge a firearm shall be fined not more than five hundred dollars nor less than fifty dollars, and shall also be liable for twice the amount of the damage caused by his act to be recovered by the person sustaining the injury or loss, in an action on this section.

### **WASHINGTON:**

1909 Wash. Sess. Laws 973, An Act Relating to Crimes and Punishments and the Rights and Custody of Persons Accused or Convicted of Crime, and Repealing Certain Acts, ch. 249, ch. 7, §266, pts. 1-3.

Dangerous or Unusual Weapons | Washington | 1909

§ 266. Setting Spring Guns. Every person who shall set a so-called trap, spring pistol, rifle, or other deadly weapon, shall be punished as follows: 1. If no injury result therefrom to any human being, by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both. 2. If injuries not fatal result therefrom to any human being, by imprisonment in the state penitentiary for not more than twenty years. 3. If the death of a human being results therefrom, by imprisonment in the state penitentiary for not more than twenty years.

**WISCONSIN:**

David Taylor, The Revised Statutes of the State of Wisconsin, as Altered and Amended by Subsequent Legislation, Together with the Unrepealed Statutes of a General Nature Passed from the Time of the Revision of 1858 to the Close of the Legislature of 1871, Arranged in the Same Manner as the Statutes of 1858, with References, Showing the Time of the Enactment of Each Section, and Also References to Judicial Decisions, in Relation to and Explanatory of the Statutes Page 1964, Image 859 (Vol. 2, 1872) available at The Making of Modern Law: Primary Sources.

Dangerous or Unusual Weapons | Wisconsin | 1872

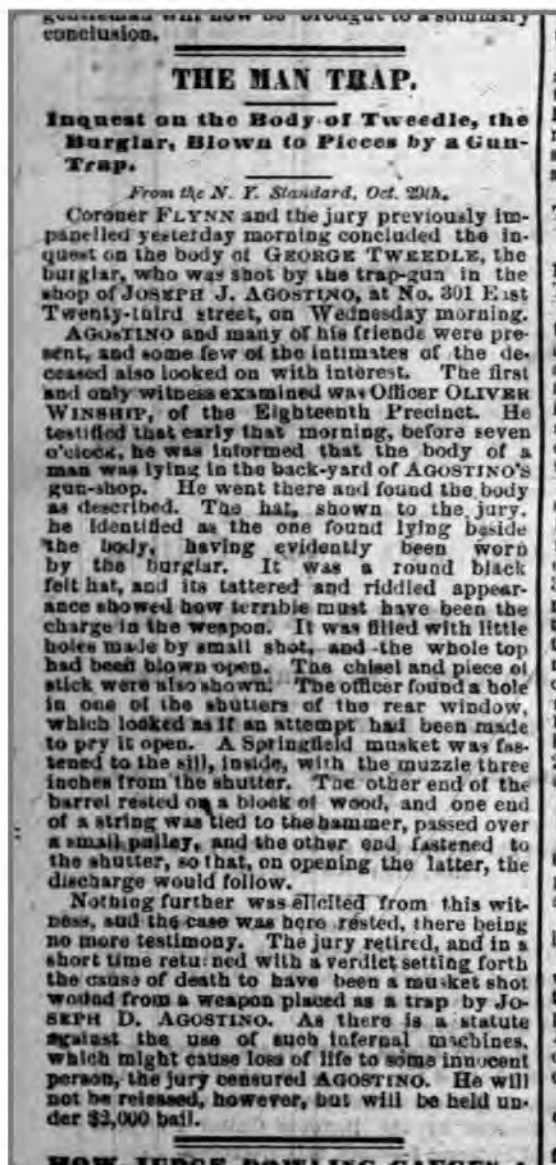
Offenses Cognizable Before Justices, Miscellaneous. § 53. Any person or persons in this State who shall hereafter set any gun, pistol or revolver, or any other firearms, for the purpose of killing deer or any other game, or for any other purpose, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding fifty dollars, and shall be imprisoned in the county jail of the proper county for a term of not less than twenty days.

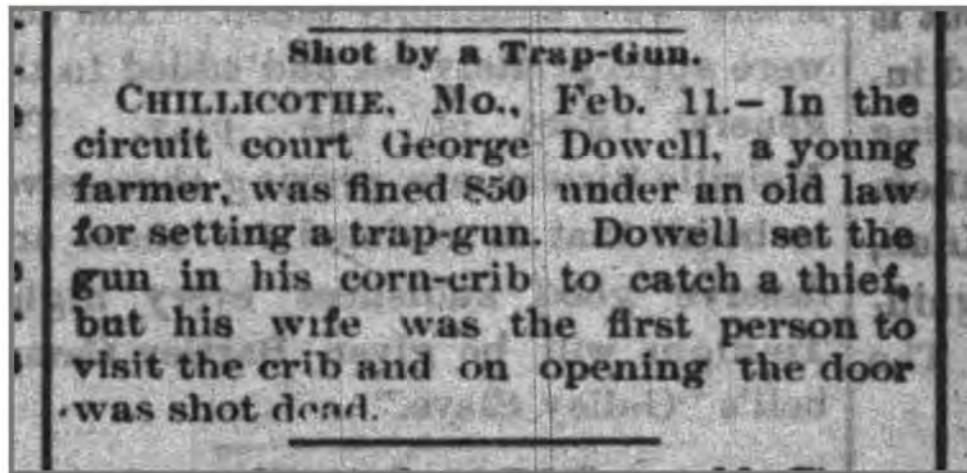
1921 Wis. Sess. Laws 870, An Act . . . Relating to Wild Animals, ch. 530, § 1.  
Hunting | Wisconsin | 1921

(29.22)(1) No person shall hunt game with any means other than the use of a gun held at arm's length and discharged from the shoulder; or place, spread or set any net, pitfall, spring gun, pivot gun, swivel gun, or other similar contrivance for the purpose of catching, or which might catch, take or ensnare game . . . and no person shall carry with him in any automobile any gun or rifle unless the same is unloaded, and knocked down or unloaded and inclosed within a carrying case[.]

**E IBIT G**







## **EXHIBIT 14**

1 ROB BONTA  
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7 *Attorneys for Defendant Rob Bonta in his*  
*official capacity as Attorney General of the*  
8 *State of California*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11 CIVIL DIVISION  
12

13 **VIRGINIA DUNCAN, RICHARD**  
14 **LEWIS, PATRICK LOVETTE,**  
15 **DAVID MARGUGLIO,**  
16 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
**corporation,**

17 Plaintiffs,  
18

19 v.

20 **ROB BONTA, in his official capacity as**  
21 **Attorney General of the State of**  
**California; and DOES 1-10,**

22 Defendants.  
23  
24  
25  
26  
27  
28

17-cv-1017-BEN-JLB

**DECLARATION OF MICHAEL**  
**VORENBERG**

Courtroom: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: May 17, 2017

1                                   **DECLARATION OF MICHAEL VORENBERG**

2           I, Michael Vorenberg, declare under penalty of perjury that the following is  
3 true and correct:

4           1.     I am an associate professor of history at Brown University. I make  
5 this declaration in support of Defendants' Supplemental Brief in Response to the  
6 Court's Order of September 26, 2022.

7           2.     This declaration is based on my own personal knowledge and  
8 experience, and if I am called to testify as a witness, I could and would testify  
9 competently to the truth of the matters discussed in this declaration.

10                               **BACKGROUND AND QUALIFICATIONS**

11           3.     I received my A.B. from Harvard University in 1986, and my Ph.D. in  
12 history from Harvard in 1995. After receiving my Ph.D., I began a postdoctoral  
13 fellowship at the W.E.B. Du Bois Institute at Harvard, and then served as an  
14 assistant professor of History at the State University of New York at Buffalo. I  
15 joined the faculty at Brown University in 1999, and have taught history there ever  
16 since.

17           4.     I have concentrated my research on the history of the U.S. Civil War  
18 and Reconstruction. My first book, *Final Freedom: The Civil War, the Abolition of*  
19 *Slavery, and the Thirteenth Amendment*, was published by Cambridge University  
20 Press in 2001. The book was a Finalist for the Gilder Lehrman Lincoln Prize. I am  
21 also the author of *The Emancipation Proclamation: A Brief History with*  
22 *Documents*, published by Bedford/St. Martin's in 2010. I am the author of a  
23 number of articles and essays on Reconstruction and the law. These include: "The  
24 1866 Civil Rights Act and the Beginning of Military Reconstruction," in Christian  
25 Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866 from*  
26 *Reconstruction to Today* (Southern Illinois University Press, 2018); "Citizenship and  
27 the Thirteenth Amendment: Understanding the Deafening Silence," in Alexander  
28 Tsesis, ed., *The Promises of Liberty: The History and Contemporary Relevance of*

1 *the Thirteenth Amendment* (Columbia University Press, 2010); “Reconstruction as a  
2 Constitutional Crisis,” in Thomas J. Brown, ed., *Reconstructions: New Directions*  
3 *in the History of Postbellum America* (Oxford University Press, 2006); and  
4 “Imagining a Different Reconstruction Constitution,” *Civil War History*, 51 (Dec.  
5 2005), 416-26. I have provided expert witness testimony in *Miller v. Bonta*, No.  
6 3:19-cv-01537-BEN-JLB (S.D. Cal.).

7 5. My curriculum vitae is attached as Exhibit A.

8 6. I have been retained by the California Department of Justice to serve  
9 as an expert witness in this case. I am being compensated at a rate of \$250 per  
10 hour.

## 11 **OPINIONS**

### 12 **I. SUMMARY**

13 7. This declaration provides results of an investigation into the existence,  
14 usage, and regulation of high-capacity firearms (guns capable of firing more than  
15 10 rounds without re-loading) during the Reconstruction period of U.S. History  
16 (1863-1877), with special focus on the period during Reconstruction when the  
17 Fourteenth Amendment to the U.S. Constitution was created, ratified, and enforced  
18 (1866-1876). The result of the investigation can be summarized as follows: There  
19 were high-capacity firearms during Reconstruction, and all of them, including those  
20 that could easily be carried by a single individual, were regarded in all the states at  
21 the time as weapons suitable only for law enforcement officers, not for ordinary  
22 citizens. With very few exceptions, almost all of which were in the Western  
23 Territories, high-capacity firearms during the era were understood to be weapons of  
24 war or anti-insurrection, not weapons of individual self-defense.

25 8. Evidence for these assertions does not necessarily take the form of  
26 statutes or court decisions, and that is entirely unsurprising: explicit legal text  
27 prohibiting civilian possession of the most dangerous weapons of war was not  
28 commonly the means by which such weapons were regulated in the United States

1 during the Civil War and Reconstruction.<sup>1</sup> Rather, prohibitions existed in the  
2 policies and practices of the U.S. army and its auxiliary or allied units, such as the  
3 state-wide militias that operated as law enforcement bodies during Reconstruction.  
4 No statutes or court opinions can be found during the period that banned civilian  
5 possession of artillery pieces, hundreds of which existed unused after the Civil War,  
6 but of course the absence of such express prohibitions cannot be read as evidence  
7 that civilians were allowed to possess such pieces. Rather, policy and practice  
8 dictated that only the U.S. army and its allied military units could possess such  
9 weapons. High-capacity firearms, which like artillery pieces were created as  
10 weapons of war, were regulated in the same way, through policy and practice  
11 limiting possession of such firearms to the U.S. army and its allied military units.  
12 Unlike artillery pieces, however, high-capacity firearms during Reconstruction did  
13 come to be regarded by their manufacturers as having a potential market among  
14 U.S. civilians.

15 9. However, efforts to create a market for high-capacity firearms in the  
16 United States during Reconstruction failed miserably. Americans who were not  
17 part of legal law enforcement bodies rarely bought high-capacity firearms. One  
18 reason why these firearms failed to sell was the regulatory climate surrounding  
19 them. U.S. and pro-Union state authorities sometimes seized shipments of such  
20 weapons on the assumption that they were intended for use by insurrectionary  
21 groups. Because of the negligible demand for such weapons, owners of gun shops  
22 rarely stocked them. The primary, almost exclusive buyers of high-capacity  
23 weapons during Reconstruction were a small number of U.S. army units and state  
24 law enforcement bodies. Manufacturers of high-capacity firearms during  
25 Reconstruction thus looked outside the United States for buyers. The Winchester  
26 Repeating Rifle Company, the only company to produce such weapons during post-

27 <sup>1</sup> In contrast, state and local laws did regulate other types of weapons, such as  
28 concealable weapons associated with criminal use, during this period.



1 Civil War Reconstruction, stayed afloat during Reconstruction only by selling high-  
2 capacity firearms to foreign armies.

3 10. During Reconstruction, high-capacity firearms did not circulate widely  
4 among the civilian population; thus there was no need for legislative efforts to  
5 regulate them among civilians. Instead, during Reconstruction, high-capacity  
6 firearms were possessed almost exclusively by the U.S. army and related military  
7 units, and they were regulated by the policies and practices of the army and these  
8 related military units.

## 9 **II. SCOPE**

### 10 **A. Time Period Covered**

11 11. The time period covered by this declaration is Reconstruction,  
12 typically defined as 1863-1877. This is the time period assigned to Reconstruction  
13 in the most commonly used study of the period, Eric Foner's *Reconstruction*.<sup>2</sup> The  
14 start point of 1863 correlates to the Emancipation Proclamation, the final version of  
15 which was signed by President Abraham Lincoln on January 1, 1863. The endpoint  
16 correlates to March 1877, when a new president, the Republican Rutherford B.  
17 Hayes, was inaugurated after a months-long contested election; and Hayes, once in  
18 office, oversaw the removal of all remaining U.S. troops in southern states that had  
19 been part of the Confederate States of America, the rebellious entity that had fought  
20 the United States during the Civil War of 1861-1865. Within the general period of  
21 Reconstruction, the more narrow time period examined in this declaration is 1866-  
22 1876. This is the period covering events relevant to the relationship between the  
23 Fourteenth Amendment and firearms during the greater period of Reconstruction.  
24 Such events include (in chronological order): the passage by the U.S. Congress of  
25 the Civil Rights Act of 1866 and the new Freedman's Bureau Act (the initial  
26 Freedman's Bureau Act, passed in March 1865, was for one year only); the passage

27 <sup>2</sup> Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*  
28 (New York: Harper and Row, 1988), xxvii.

1 of the Fourteenth Amendment by Congress in 1866; the passage by Congress of the  
2 Reconstruction Act of 1867 (sometimes referred to as the “Military Reconstruction  
3 Act”); the adoption of the Fourteenth Amendment by state ratification in 1868; the  
4 enforcement of the Fourteenth Amendment by U.S. Statutes adopted in 1870-71;  
5 and the first interpretation of the Fourteenth Amendment’s relation to the Second  
6 Amendment by the U.S. Supreme Court, in *U.S. v. Cruikshank* of 1876 (92 U.S.  
7 542). This declaration also mentions the opinion in *Presser v. Illinois* (116 U.S.  
8 252 (1886)), even though it came well after Reconstruction, because the events that  
9 led to the case occurred in early 1879, very soon after the end of Reconstruction.

10 **B. Geographical Focus**

11 12. This declaration covers the geographic area of the entire United States,  
12 both its states and territories, during Reconstruction. However, its particular  
13 regional focus is on the southern states that had declared themselves seceded in  
14 1860-61 and had joined together into the Confederacy by April 1861. These states  
15 collectively represented the region during 1866-1876 where there was the most  
16 frequent use of firearms, mainly because of armed conflict either between  
17 contending factions within these states or between the U.S. army and insurgents in  
18 these states. Even more specifically, this was the only region outside of the  
19 Western Territories where Henry Rifles and Winchester Repeating Rifles were  
20 used. As will be explained later, these are the weapons examined most closely in  
21 this declaration (see IV. Historical Background and Terminology). In the Western  
22 Territories during Reconstruction, these weapons were used primarily by the U.S.  
23 army against Native Americans in the so-called “Indian Wars” that extended from  
24 the 1860s to the 1890s. Some civilian U.S. citizens in the Western Territories  
25 during this period also possessed these weapons. However, as with all firearms in  
26 the region at the time, it is difficult to determine how common possession of Henry  
27 Rifles and Winchester Repeating Rifles was in the Western Territories in the  
28 Reconstruction period. Also, laws in these territories in this period were in flux, so

1 it is difficult to know whether possession by civilian U.S. citizens there was lawful.  
2 Whatever the laws were at any given moment in this region during Reconstruction,  
3 the number of non-army U.S. citizens in the Western Territories was always  
4 negligible.

### 5 **III. RESEARCH MATERIALS AND METHODOLOGY**

6 13. Research materials included standard scholarly works on firearms and  
7 U.S. history for the period of Reconstruction—roughly twenty scholarly books and  
8 thirty scholarly articles. Materials also included newspaper and magazine articles  
9 contemporary to the period studied. Hundreds of these are accessible and were  
10 accessed via commonly used databases by scholars, such as Chronicling America,  
11 Pro-Quest Historical Newspapers, and the Hathi Trust. U.S. government documents  
12 and documents from U.S. states and territories were accessed via the Hein Online  
13 database or the Nexis Uni database (a version of the better-known Lexis Nexis legal  
14 database).

15 14. All of these documents, whether contemporary to the period studied or  
16 produced by scholars after that period, were searched for information regarding  
17 firearms—especially Henry Rifles and Winchester Repeating Rifles—with special  
18 attention to the presence, use, and regulation of these firearms during the  
19 Reconstruction era (1863-1877).

20 15. In all my research, I gave more weight to evidence that attested to  
21 firearms being owned and/or used than to evidence that manufacturers of the  
22 firearms or other sellers were trying to get people to buy and use them.  
23 Advertisements for the firearms are not evidence of possession. However, if  
24 advertising material provided testimony of the firearms being owned or used, I  
25 treated that testimony as legitimate evidence, albeit evidence that might have been  
26 embellished, even invented, for the sake of sales.

1 **IV. HISTORICAL BACKGROUND AND TERMINOLOGY**

2 **A. Firearm Capacity at or near the Founding**

3 16. Weapons capable of holding more than ten rounds did exist by the time  
4 that the Second Amendment was adopted in 1791, but only in very small numbers,  
5 and almost exclusively in Europe. Those that might have existed in the U.S. at the  
6 time were made to order by individual gunsmiths for individual customers. These  
7 bespoke weapons were extraordinarily rare in the United States surrounding the  
8 period of the adoption of the Second Amendment.

9 17. One of these rare guns was the “Cookson” or “Hill” model, based on the  
10 “Lorenzoni system” established in Europe in the 1600s. Only one gun of this type  
11 definitively existed in early America; it was an 11-shot rifle mentioned in an  
12 account of 1722 from Boston. Even if others of this type existed in British North  
13 America, they would not have been well known. According to one expert, the  
14 slightest defect in these weapons would lead to an explosion, so they required  
15 perfect construction by “fine craftsmen.” Thus, only “wealthy sportsmen” could  
16 afford them.<sup>3</sup>

17 18. Another rare high-capacity gun of the era was the Girardoni (or  
18 Girandoni) air rifle, which could hold at least 20 rounds. The Girardoni was  
19 manufactured exclusively in Europe. Most of the guns manufactured were custom-  
20 ordered in the late 1700s by the Austrian army, which used the weapons with some  
21 success. To maintain a military advantage, the Austrians demanded that the guns  
22 be manufactured in secret.<sup>4</sup> No Girardoni is known to have appeared in America  
23 prior to 1800. There were about 30-40 guns on the Lewis and Clark expedition of  
24 1804-1806, including a single Girardoni. Expedition leaders used it not for self-  
25 defense or hunting but for one purpose only: to impress Native Americans with

26 <sup>3</sup> Harold L. Peterson, *Arms and Armor in Colonial America* (New York:  
27 *Bramhall House*, 1956), 215-17.

28 <sup>4</sup> W. H. B. Smith, *Gas, Air and Spring Guns of the World* (Harrisburg, Penn.:  
Military Service Publishing Company, 1957). 30.

(continued...)

1 white Americans' advanced technology.<sup>5</sup> Its presence on the expedition is not  
 2 evidence that the gun was well-known to Americans of the period, much less to  
 3 Americans at the time of the Second Amendment's adoption more than ten years  
 4 earlier.

5 19. The final example of a high-capacity gun of the era was the "Belton,"  
 6 though this gun held fewer than ten rounds. Joseph Belton, who traveled between  
 7 Philadelphia and England, owned a nine-shot repeating gun. It had almost certainly  
 8 been produced in England in 1758. In 1777, during the American Revolution,  
 9 Belton demonstrated the gun to seven Americans known for their military or  
 10 technical expertise. They supported his petition to the Continental Congress of an  
 11 order of 100 similar weapons to be delivered by Belton. Congress soon canceled  
 12 the order because of the extraordinary expense Belton demanded. An expert on the  
 13 "Belton" gun has come to the conclusion that of the 100 guns initially ordered,  
 14 "none was ever made."<sup>6</sup>

### 15 **B. The Henry Rifle and the Winchester Repeating Rifle**

16 20. For the purposes of this declaration, a high-capacity firearm is defined  
 17 as a firearm that can hold more than 10 rounds. The magazine holding the rounds  
 18 can either be integral to the gun or external to it. The gun itself can be carried by a  
 19 single person. Finally, the gun must have the potential for common usage: it has to  
 20 be mass-manufactured or have the potential to be mass-manufactured, thus  
 21 excluding experimental weapons that were never widely adopted.

23 <sup>5</sup> Jim Garry, *Weapons of the Lewis and Clark Expedition* (Norman, Okla.:  
 24 Arthur H. Clark, 2012), 94; S. K. Wier, "The Firearms of the Lewis and Clark  
 Expedition" (2010),  
 25 [http://www.westernexplorers.us/Firearms\\_of\\_Lewis\\_and\\_Clark.pdf](http://www.westernexplorers.us/Firearms_of_Lewis_and_Clark.pdf) (accessed Nov.  
 7, 2022).

26 <sup>6</sup> Robert Held, *The Belton Systems, 1758 and 1784-86: America's First*  
*Repeating Firearms* (Lincoln, R.I.: Andrew Mowbray, 1986), 33-39 (quote at 39).  
 27 The prototype gun from 1758 that is believed to have been Belton's is preserved at  
 the National Museum of American History; see  
 28 [https://americanhistory.si.edu/collections/search/object/nmah\\_440031](https://americanhistory.si.edu/collections/search/object/nmah_440031) (accessed  
 Nov. 7, 2022).

1           21. Within these specifications, there were only two high-capacity  
2 firearms in the entire world that were produced during Reconstruction: the Henry  
3 Rifle and the Winchester Repeating Rifle. I note the exclusion here of the Gatling  
4 Gun. That weapon was indeed a high-capacity firearm produced during  
5 Reconstruction, but it could not be carried by a single person, as it was massive in  
6 size and nearly 200 pounds in weight.

7           22. The Henry Rifle and the Winchester Repeating Rifle were nearly the  
8 same weapon. Manufacturing of the Henry began soon after the weapon was  
9 patented, in 1860. In 1866, the Winchester Repeating Rifle was established in New  
10 Haven, Connecticut. Its owner, Oliver Winchester, hired the inventor of the Henry,  
11 who designed a slightly modified version of the Henry Rifle. The new model was  
12 dubbed a Winchester Repeating Model. Because it was released in 1866, it was  
13 sometimes called the “Winchester 66.” In 1873, a new model of Winchester was  
14 released, the “Winchester 73.” The rifle was nearly the same as the “Winchester  
15 66” but used a slightly different type of ammunition. All of these rifles, the Henry  
16 and the two models of the Winchester, had the following features: they held fifteen  
17 rounds in a chamber fixed within a stock just below the rifle barrel; they used a  
18 lever below the trigger to eject spent shells and load new rounds; and they were  
19 easily reloaded. The Winchester was easier to reload than the Henry—it had a  
20 “gate” on the side near the trigger that allowed the user to feed rounds into the gun  
21 during lulls in firing or after all the rounds in the chamber were spent).

22 Advertisements for Henrys and Winchesters claimed that the weapons could fire  
23 two rounds per second (this rate might have been exaggerated—some of the same  
24 ads made the false claim that the guns held eighteen rounds, not fifteen—but all  
25 agreed that the rifle could fire at a rate at least as fast as any existing rifle).

26           23. There were other individual-use weapons during the Reconstruction  
27 era that could fire multiple shots in rapid sequence, but none had a higher capacity  
28 than ten rounds. Some sidearms, most notably six-shot revolvers, could fire rounds

1 in rapid sequence. But no sidearm held more than ten rounds. Certain rifles beside  
2 the Henry and Winchester could fire multiple rounds rapidly, but none held more  
3 than ten rounds. These included the Spencer Rifle (4-round capacity) and the  
4 Sharps Rifle (7-round capacity). The U.S. army and the Confederate army  
5 approved the adoption of the Spencer and Sharps rifles. These weapons were  
6 known either by their company name or by the generic term “repeaters” or  
7 “repeating rifles.” Henrys and Winchesters were also repeating rifles, but because  
8 they were in a class of their own, due to their high capacity, they were generally  
9 known only as Henrys or as Winchesters. In the language of the day, they did not  
10 fall into the generic category of “repeaters” or “repeating rifles” (thus a very well-  
11 armed individual of the period might be described as having “a revolver, a repeater,  
12 and a Winchester”—three distinct categories).

13 24. This declaration occasionally uses the term “Henry-Winchester.”  
14 Although the Winchester Repeating Rifle effectively replaced the Henry Rifle,  
15 Henry Rifles continued to be used long after Winchesters began to be produced. At  
16 certain times and places during Reconstruction, both types of weapons might be  
17 found in possession of a single, armed group. For such situations, the phrase  
18 “Henry Rifles and/or Winchester Repeating Rifles” would be appropriate, but  
19 seeing how cumbersome that phrase is, it has been shortened in this declaration to  
20 “Henry-Winchester” or “Henry-Winchesters.”

### 21 **C. The Henry Rifle and the American Civil War**

22 25. Production and sales numbers reveal that Henry Rifles and their  
23 successors, Winchester Repeating Rifles, were uncommon during the Civil War and  
24 Reconstruction compared to other rifles.<sup>7</sup> Until 1866, manufacturers of Henrys and

25 <sup>7</sup> Unless otherwise noted, this declaration relies on two sources for numbers  
26 of Henry Rifles and Winchester Repeating Rifles manufactured and sold: Pamela  
27 Haag, *The Gunning of America: Business and the Making of American Gun Culture*  
28 (New York: Basic Books, 2016); and John E. Parsons, *The First Winchester: The  
Story of the 1866 Repeating Rifle* (New York: Morrow, 1955).

(continued...)



Winchesters concentrated their marketing efforts within the United States on trying to persuade the U.S. army and pro-Union state militias to adopt the high-capacity rifles as standard weapons for soldiers.<sup>8</sup> The U.S. War Department never adopted Henry-Winchesters. The army's chief of ordnance, General James Ripley, reported early in the war that these rifles, along with lower-capacity rifles were "too complicated, too heavy, and too costly . . . and apt to waste ammunition."<sup>9</sup> The ordinance department never changed its position on Henry-Winchesters. During the Civil War, the U.S. army opted instead for single-shot rifles and, in some instances, low-capacity "repeaters" (rifles that held magazines of two to seven rounds). The U.S. army did allow individual commanders of army units or allied units to buy Henry-Winchesters for their soldiers. For example, of the 900 Henry rifles sold during 1862, 300 went to Kentucky's pro-Union state militia.<sup>10</sup> Although some military units that purchased Henry Rifles were able to do so using funds allotted to them by state governments, most of the soldiers and officers who purchased the weapons used their own money. By the end of the Civil War in 1865, U.S. soldiers had purchased about 8,500 Henry Rifles; most of those had been bought with the soldiers' own money. By contrast, the U.S. government had purchased nearly 107,000 Spencer single-shot rifles for use by the army.<sup>11</sup>

26. Meanwhile during the Civil War, the Confederate War Department also never adopted Henry Rifles. Whether that was by choice is unclear. Oliver Winchester, who had the greatest control of the company that made Henrys, declared that he did not want the weapons sold to Confederates. His policy may have been due to pure loyalty to the Union cause or to fear that he would be

<sup>8</sup> Haag, *The Gunning of America*, 65-81. During the Civil War, the pro-Union border states of Kentucky and Missouri had state-wide militias that were authorized by state governments to fight for the Union.

<sup>9</sup> Haag, *The Gunning of America*, 70.

<sup>10</sup> Haag, *The Gunning of America*, 76.

<sup>11</sup> Haag, *The Gunning of America*, 81.

(continued...)

1 charged with treason by the U.S. government if he facilitated gun sales to the  
2 rebels. Some Confederate soldiers were able to acquire Henrys by theft or by using  
3 agents who purchased them in the North and smuggled them to the South.<sup>12</sup> Most  
4 Confederates knew about the weapon. A widely-circulated story told of a  
5 Confederate soldier who called the gun “that damned Yankee rifle that can be  
6 loaded on Sunday and fired all week.” One of the soldiers in Robert E. Lee’s Army  
7 of Northern Virginia regretted that “we never did secure the Winchester.”<sup>13</sup> Some  
8 Confederate soldiers did manage to obtain Henry-Winchesters, either by smuggling  
9 or, more commonly, by confiscating them from captured Union soldiers. In late  
10 1862, for example, a number of pro-Union Kentucky soldiers who had just acquired  
11 Henry Rifles were overrun by pro-Confederate Kentuckians and Tennesseans. As  
12 many as 300 Henry rifles ended up in Confederate hands as a result.<sup>14</sup> These  
13 weapons probably did not stay with the southerners for very long. By June 1865,  
14 all of the major Confederate armies had surrendered. Typically, surrender required  
15 all Confederate soldiers to “stack arms.” If they had sidearms, they could keep  
16 them, but any rifles had to be relinquished. Confederate veterans would thus have  
17 been prohibited from having Henry-Winchesters. At least some ex-Confederate  
18 soldiers ended up with Henry-Winchesters, however, though not legally. If they  
19 failed to turn in their rifles, they were in violation of the “parole” agreement that  
20 protected them from imprisonment after surrender. Some ex-Confederates  
21 managed to get Henry-Winchesters by stealing them from U.S. army depots.  
22 Others bought them from smugglers who had gotten the weapons in Mexico and  
23 then carried them across the border to Texas. Henry-Winchesters were easier to

24 <sup>12</sup> Haag, *The Gunning of America*, 65. For evidence that U.S. authorities  
25 would have regarded the sale of Henrys to Confederates as treasonous, and thus that  
26 Winchester had good reason to avoid such sales, see Haag, *The Gunning of*

27 <sup>13</sup> Harold F. Williamson, *Winchester: The Gun That Won the West*  
(Washington, D.C.: Combat Forces Press, 1952), 38.

28 <sup>14</sup> Haag, *The Gunning of America*, 76.

1 find in Mexico than in the U.S. in 1864-1867. They had been sold by the thousands  
2 to the Juaristas, the rebel force that would ultimately wrest Mexico from  
3 Maximilian, the self-proclaimed “Emperor” installed in Mexico City by Napoleon  
4 III of France.

5 27. Not only the Juaristas but other non-U.S., non-Confederate armies  
6 possessed Henry-Winchesters. Indeed, foreign armies were the main market for  
7 Henry-Winchester manufacturers during Reconstruction. Had it not been for the  
8 war in Mexico, along with the Franco-Prussian War and the various armed conflicts  
9 between the Russian and Ottoman empires—all wars involving thousands of  
10 Henry-Winchesters—the manufacturers of these weapons would likely have gone  
11 bankrupt.<sup>15</sup>

12 28. In the United States by 1866, Henry-Winchesters did exist, to be sure,  
13 but in much smaller numbers than in foreign countries. U.S. veterans of the Civil  
14 War could possess Henry rifles. Beginning in May 1865, U.S. army volunteers  
15 began mustering out in significant numbers. The non-regular U.S. army (that is, the  
16 volunteer force), nearly a million strong by April 1865, would fall well below  
17 100,000 by the end of the year. Unlike ex-Confederate soldiers, ex-U.S. soldiers  
18 could keep their rifles upon discharge. This meant that U.S. soldiers at the time  
19 who had Henry rifles might continue to possess them once they re-entered civilian  
20 life. However, the number of such U.S. veterans who kept their Henrys was small,  
21 perhaps 7,500,<sup>16</sup> and those that opted to keep them paid dearly. The U.S. army did  
22 not simply give weapons away for free to discharging soldiers who had acquired

23 <sup>15</sup> Haag, *The Gunning of America*, 109-42.

24 <sup>16</sup> The figure of 7,500 Henrys kept by pro-Union soldiers after the war is  
25 reached in the following way. 8,500 had been purchased by or for U.S. soldiers. See  
26 Haag, *The Gunning of America*, 81. Of these, roughly 2,000 were purchased for  
27 soldiers (based on a count of regiments known to have bought the rifles with public  
28 funds). Thus 6,500 Henrys were privately owned by soldiers. Of the roughly 2,000  
Henrys purchased for soldiers, 808 were known to have been bought by the soldiers  
at the end of the war. See 42nd Cong., 2nd sess., S. Doc. 183, “Sale of Ordnance  
Stores,” *U.S. Congressional Serial Set* (1871), pp. 167-172. Thus, a generous  
estimate of how many U.S. veterans had Henrys after the war is 7,500.

1 them at no cost from their military units. Rather, soldiers wanting to keep their  
 2 weapons had to buy them at market value. A Spencer carbine (a short-barreled,  
 3 repeating rifle, and one of the most popular weapons among U.S. soldiers), would  
 4 cost a discharging soldier about \$10 (roughly \$175 in 2022 dollars). A Henry  
 5 would cost at least \$30 (roughly \$525 in 2022 dollars). A private in the U.S. army  
 6 typically made \$13 per month. If he had a Spencer that he wanted to buy, he would  
 7 have to pay less than one month's wages—not a bad deal for a perfectly sound and  
 8 popular rifle. If he wanted to buy a Henry, though, that would cost him more than  
 9 two months' wages, and there would be little to persuade him that the difference in  
 10 price corresponded to the difference in value. The result was that very few Henrys  
 11 were purchased by discharged U.S. soldiers. According to a U.S. army report, 808  
 12 Henrys were purchased by discharging Civil War soldiers, compared to 8,289  
 13 Spencer Carbines.<sup>17</sup> Henrys that were not purchased went to the U.S. War  
 14 Department's ordnance department, which did not sell them.

15 29. By the end of the Civil War in 1865, very few combatants had used  
 16 Henry Rifles, and fewer still had kept them once they were discharged. The result  
 17 was that only a small number of Henrys were in circulation in the United States  
 18 immediately after the war—perhaps 10,000, and this in a country of roughly 35  
 19 million people.<sup>18</sup> Those veterans who possessed the guns understood that they were  
 20 weapons of war—they had used them as such—rather than weapons of individual  
 21 self-defense. Maybe veterans kept them as souvenirs, maybe as commodities to be

22 <sup>17</sup> General Orders, No. 101, May 30, 1865, *The War of the Rebellion*  
 23 (Washington, D.C.: Government Printing Office, 1880-1901), ser. 3, vol. 5, p. 43;  
 24 42<sup>nd</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 183, "Sale of Ordnance Stores," *U.S. Congressional*  
*Serial Set* (1871), pp. 167-172.

25 <sup>18</sup> 11,000 Henry Rifles were produced between 1861 and 1865; see Parsons,  
 26 *The First Winchester*, 48. Assuming that all were sold—a generous assumption—  
 27 then 2,500 were sold to civilians and 8,500 to U.S. soldiers (the 8,500 figure comes  
 28 from note 12 above). Of the 8,500 U.S. soldiers who had Henrys, 7,500 kept them  
 after the war; see note 12 above. Thus 10,000 Henrys were in circulation after the  
 war (again, a generous estimate). The U.S. census of 1860 reported just over 31  
 million Americans; the census of 1870 reported just over 38 million. Thus 35  
 million is given as an estimate of the population of the United States in 1865.

1 sold at a later date, maybe as novelties to be displayed at local shooting contests or  
2 social gatherings (rifle clubs and shooting galleries were common in the North).  
3 Maybe they planned to travel to or through the Western Territories, where Henrys  
4 were gaining a reputation as good weapons against hostile Native Americans or  
5 roaming bands of criminals, known as “highwaymen” or “road agents.” Regardless  
6 of why a U.S. veteran might have kept a Henry, he would have understood that it  
7 was an uncommon weapon, and one not intended for individual self-defense. It was  
8 strictly a weapon of war.

9 **D. State Secession, State Readmission, State Redemption**

10 30. Reconstruction was a time period (1863-1877) but also a process. The  
11 process was described by President Abraham Lincoln in his last public speech  
12 (April 11, 1865) as getting “the seceded States, so called,” which were “out of their  
13 proper practical relation with the Union,” back into their “proper practical relation”  
14 with the Union.<sup>19</sup> To better understand this process, one must understand the  
15 meaning of key terms used during the Reconstruction period: state secession, state  
16 readmission, and state redemption.

17 **1. State Secession**

18 31. Lincoln used the phrase “seceded States, so called” because he did not  
19 accept the constitutionality of state secession. All eleven states of the Confederacy  
20 had declared themselves “seceded” from the Union by May 20, 1861. The  
21 governments of all of these states regarded state secession, by which they meant a  
22 breaking-off from the Union, as constitutional. The Lincoln administration rejected  
23 this interpretation and declared instead that the “so-called” seceded states had  
24 remained in the Union but had had their governments overtaken by disloyal,  
25 insurrectionary groups. Reconstruction, therefore, would be complete when all of  
26 the “so-called” seceded states had governments that were loyal to the Union. The

27 <sup>19</sup> Roy P. Basler, ed., *Collected Works of Abraham Lincoln* (New Brunswick,  
28 N.J.: Rutgers University Press, 1953), 8:403-4.

1 presidential administrations of the Reconstruction era that followed Lincoln's  
2 (Andrew Johnson's and Ulysses S. Grant's) adopted this understanding of  
3 secession. So, too, did all the Reconstruction-era Congresses, though a minority of  
4 Congressmen took a somewhat different view, claiming that secession was indeed  
5 unconstitutional but that the states in question had indeed broken off from the  
6 Union and therefore could be treated as territories. This declaration does not delve  
7 into the question of the constitutionality of secession. It simply notes that U.S.  
8 lawmakers of the Reconstruction era generally regarded secession as  
9 unconstitutional and a form of insurrection.

## 10 **2. State Readmission**

11 32. There were competing views among U.S. lawmakers during  
12 Reconstruction as to when a "so-called" seceded state could be deemed  
13 "readmitted" to the Union. The dominant view among U.S. lawmakers was that a  
14 state was deemed readmitted when Congress agreed to seat Representatives and  
15 Senators from that state. This meaning of state readmission is used in this  
16 declaration. In justifying federal intervention into "so-called" seceded states and the  
17 imposition of qualifications on states for readmission, national law makers relied on  
18 two constitutional principles: 1) "war powers"; and 2) the "guarantee clause"—the  
19 clause of the U.S. Constitution declaring that "The United States shall guarantee to  
20 every State in this Union a Republican Form of Government" (U.S.C., Art. IV, Sec.  
21 4). This declaration does not delve into the question of the legitimacy and scope of  
22 these constitutional principles. It simply notes that these were the principles of the  
23 time used to justify federal policy towards the "so-called" seceded states during  
24 Reconstruction.

## 25 **3. State Redemption**

26 33. Between 1866 and 1871, all of the "so-called" seceded states were  
27 readmitted to the Union. At the point of readmission, each state had a government  
28 that was loyal to the Union and controlled by a political party affiliated with the



1 national Republican Party, which for all the years of Reconstruction was the Party  
2 in control of the U.S. government. In 1866-68, the last years of the administration  
3 of Andrew Johnson, he renounced the Republican Party and declared himself a  
4 Democrat, which he had been prior to the Civil War, but the U.S. government as a  
5 whole was still Republican. The Republicans in Congress beginning in December  
6 1866 had a two-thirds majority that allowed them to override Johnson's vetoes; and  
7 beginning in March 1867, with the Reconstruction Act, they effectively took  
8 control of the "Commander-in-Chief" powers typically vested in the Executive  
9 branch. In each state after readmission there was internal conflict. Part of that  
10 conflict involved efforts by Democrats, many of whom were former Confederates  
11 or Confederate-sympathizers, to take control of the state government from  
12 Republicans. By 1877, the Democrats had taken control of the governments of all  
13 the states of the former Confederacy. At the point when Democrats took control of  
14 a state, they declared the state "redeemed" and began rolling back reforms instituted  
15 by prior Republican state authorities. In this declaration, state redemption means  
16 the period when Democrats declared a state "redeemed" and began instituting  
17 reactionary measures.

18 **E. Militias**

19 34. Militias have a long history in the United States, and they have been  
20 studied extensively by scholars investigating the Second Amendment, especially for  
21 the period of Colonial America and the Early Republic. Militias existed during  
22 Reconstruction, but the militias of that period were fundamentally different from  
23 the militias of the earlier periods.

24 35. By the time that the Civil War broke out in 1861, well-organized state  
25 militias such as had existed in the Early Republic technically existed but were  
26 practically defunct, except in frontier states like Missouri and Texas. Militias by  
27 1861 essentially existed as volunteer local groups authorized by state governments  
28 but were only lightly controlled by those governments. Such militias were used, to



1 be sure. Local militias in Virginia in 1859, for example, had worked together with  
2 a unit of the U.S. army commanded by Robert E. Lee to put down the effort by  
3 John Brown to seize the U.S. armory at Harpers Ferry and distribute arms to  
4 enslaved Black Americans in the region.

5 36. The fact that state militias did technically exist by 1861 became very  
6 important once the Civil War broke out. The power under the U.S. Constitution for  
7 a President to call up state militias is what Abraham Lincoln invoked at the start of  
8 the war when he authorized up to 75,000 men to come together to put down the  
9 insurrection in the southern states. The Confederate States of America, which  
10 adopted a constitution quite similar to the U.S. Constitution, invoked this same  
11 authority when calling up its national army.

12 37. Although soldiers had been called to national armies in their role as  
13 state militiamen, the armed units that formed the basis of national armies during the  
14 Civil War were not state-based militia units but rather state-formed regiments  
15 approved as national army units by the U.S. War Department (hence only in rare  
16 instances would a regiment be a replica of a local militia unit). Nonetheless, the  
17 national armies continued to be managed at times by laws designed in the pre-war  
18 era to manage state militias. In July 1862, for example, the United States passed a  
19 Militia Act that standardized the terms of membership in state-wide militias even  
20 though state-wide militias had grown defunct in the North prior to the war; only in  
21 this way—by legislating via the old state militia system—did the U.S. War  
22 Department have the authority to manage the personnel of the national army. The  
23 July 1862 Act significantly declared that Black Americans could not be denied  
24 admission to state militias. That was a pivotal development, as most state militias  
25 prior to the war (all of them in the South, most of those in the North), had denied  
26 membership to Black Americans.

27 38. When the Civil War ended in mid-1865, state militias, which had been  
28 given new life by the war, thrived, but not everywhere. In the North, they fell again

1 into disuse, though they would begin to appear again with strength in the late 1870s  
 2 and 1880s. In the border states of Missouri and Kentucky, which had remained  
 3 loyal to the Union despite being slave states, state militias continued to be  
 4 important, as guerrillas caused disturbances in the states long after the Civil War  
 5 was over. In the states of the former Confederacy after the war, the state militias  
 6 had the most visible—and notorious—presence. Invoking newly passed  
 7 discriminatory state laws (“Black Codes”), or simply acting on their own discretion,  
 8 southern state militias, which excluded all Black Americans, harassed, assaulted,  
 9 and even killed Black Americans and pro-Union whites. These militias were  
 10 composed mostly of former Confederate soldiers, many of whom wore their  
 11 Confederate uniforms while in action. These militias were regarded by U.S.  
 12 lawmakers as pernicious and unlawful. Leaving aside the obvious illegality of the  
 13 many acts committed by these militias, they were in violation of U.S. law simply by  
 14 wearing Confederate uniforms.<sup>20</sup>

15 39. In March 1867, the U.S. Congress abolished all southern state militias,  
 16 with some exceptions. Exempted were the border states, the four slave states that  
 17 had never seceded, though Kentucky and Missouri were the only border states with  
 18 state militias, and both states would disband their militias by 1868. Also exempted  
 19 were two states that had joined the Confederacy: Arkansas and Tennessee.<sup>21</sup>  
 20 Arkansas was exempted because it had proven itself to President Johnson as a  
 21 genuinely loyal state. It had established a loyal state government, led by Governor  
 22 Powell Clayton, that conformed to the guidelines that Abraham Lincoln had laid

23  
 24 <sup>20</sup> James Speed, “Surrender of the Rebel Army of Northern Virginia,” April  
 25 22, 1865, *Opinions of the Attorney General*, 11:208-9. For these immediate post-  
 26 war southern militias, see William A. Blair, *The Record of Murders and Outrages: Racial Violence and the Fight Over Truth at the Dawn of Reconstruction* (Chapel Hill: University of North Carolina Press, 2021), 66-67.

27 <sup>21</sup> 14 U.S. Statutes 487, Chap 170, Sec. 6 (Approved March 2, 1867); James  
 28 E. Sefton, *The United States Army and Reconstruction, 1865-1877* (Baton Rouge: Louisiana State University Press, 1967), 112.

(continued...)

1 out in December 1863 and that Johnson had affirmed soon after taking office.  
2 Arkansas in 1868 created a state militia that U.S. authorities regarded as a  
3 legitimate armed organization loyal to the United States.<sup>22</sup> Tennessee was  
4 exempted because it, too, had established a loyal state government, led by Governor  
5 William (“Parson”) Brownlow. It had gone one step further. It had ratified the  
6 Fourteenth Amendment, passed by Congress in mid-1866, thus becoming the first  
7 southern state to do so and, as a result, becoming the first formerly seceded state to  
8 be formally readmitted to the Union. With Brownlow’s urging, Tennessee in 1866  
9 had created a state militia, the “Tennessee State Guard.” This organization was  
10 composed of both white and black members; it was well-armed (with Enfield  
11 single-shot rifles, not with Henrys or Winchesters); and it drilled regularly. Former  
12 Confederates in the state despised the force.<sup>23</sup>

13 40. After Congress in 1867 abolished all but the exempted southern state  
14 militias, some of the newly created pro-Union governments in the non-exempted  
15 southern states created new state militias that were expressly tasked with subduing  
16 insurrection and anti-black activities. Such states included Louisiana, North  
17 Carolina, South Carolina, and Texas. Loyal state governments in Alabama and  
18 Florida proclaimed an intention to organize such new state militias, but they never  
19 followed through. A loyal government in Mississippi in 1870 went so far as to  
20 organize such a state militia, but the force was never used. The state militias of the  
21 South that did exist and saw action, those in Arkansas, Louisiana, North Carolina,  
22 Tennessee, South Carolina, and Texas, were wholly new innovations (though Texas  
23 made the dubious claim that the pre-war Texas Rangers was a predecessor  
24 organization). The new, post-1867 southern state militias were under the direct

25 \_\_\_\_\_  
26 <sup>22</sup> Michael G. Lindsey, “Localism and the Creation of a State Police in  
Arkansas,” *Arkansas Historical Quarterly*, 64 (Winter 2005), 356-58.

27 <sup>23</sup> Ben H. Severance, *Tennessee's Radical Army: The State Guard and Its*  
28 *Role in Reconstruction, 1867-1869* (Knoxville: University Press of Tennessee,  
2005), 1-119.

control of the state (the Governor and/or state adjutant general), as opposed to merely authorized by the governor. They drilled and paraded regularly. They were paid and armed by the state, with the arms kept in state-maintained, state-guarded armories or arsenals. Finally, all of the militias allowed if not encouraged Black American men to join, though some, like North Carolina's, segregated white companies from black companies. The high number of Black Americans in the southern state militias led some people at the time as well as some early historians to call these organizations "Negro Militias." This declaration does not use that label. Pre-Civil War state militias in the South, in contrast to these wholly new post-war organizations, were unpaid, self-armed, and all-white.<sup>24</sup>

41. Two of the new southern state militias, those of Louisiana and South Carolina, are particularly relevant to the subject of this declaration. As will be discussed below, the state militias of Louisiana and South Carolina—and only those state militias—were armed with Winchester Repeating Rifles.

42. The composition of and membership requirements of the new state militias indicate much about attitudes toward firearms regulation among law makers of the time. The inclusion of Black Americans in the militias was part of a larger understanding among Republicans in the era of the Fourteenth Amendment that regulations restricting blacks from possessing firearms were no longer to be regarded as constitutional.<sup>25</sup> The new militias did more than include blacks. They excluded some whites, specifically those who were regarded as still supporting the

<sup>24</sup> Otis A. Singletary, *Negro Militia and Reconstruction* (Austin: University of Texas Press, 1957), 3-33; Otis A. Singletary, "The Texas Militia During Reconstruction," *Southwestern Historical Quarterly*, 60 (July 1956), 25-28; Allan Robert Purcell, "The History of the Texas Militia, 1835-1903" (Ph.D. diss., University of Texas, Austin, 1981), 221-27.

<sup>25</sup> Clayton E. Cramer, Nicholas J. Johnson, and George A. Mocsary, "'This Right is Not Allowed by Governments That Are Afraid of the People': The Public Meaning of the Second Amendment when the Fourteenth Amendment was Ratified," *George Mason Law Review*, 17 (2010), 823-863, esp. 852-863.

(continued...)

1 Confederate cause.<sup>26</sup> Thus, the new state militias that began forming in 1868, the  
2 same year as the adoption of the Fourteenth Amendment, indicated that lawmakers  
3 understood that Black Americans' security required not simply the absence of  
4 regulations denying them arms but the presence of regulations denying arms to  
5 those who were known to support insurrection against the United States and  
6 violence against blacks.

7 **F. The U.S. Army During Reconstruction**

8 43. The U.S. army began occupying parts of the South as soon as the Civil  
9 War broke out and would not end its occupation until 1877, the end of  
10 Reconstruction, when it removed its last units from Florida, Louisiana, and South  
11 Carolina. During the war, the U.S. army had exclusive police powers in the  
12 occupied South until or unless local policing institutions—courts and  
13 constabularies—were deemed loyal to the United States. At that point, the U.S.  
14 army cooperated with local police institutions to “keep the peace.” Yet U.S.  
15 commanders retained the power, which they had had since the start of the war, to  
16 declare martial law in an area, thus suspending the civil institutions there. This  
17 arrangement carried over from the Civil War into the early years of post-war  
18 Reconstruction. Until April 1866, U.S. troops had unrestrained power to operate  
19 within state boundaries to keep the peace. As part of that power, they could use  
20 troops as police and hold their own courts that could try civilians.<sup>27</sup>

21 44. The army also was willing to use this power in states that had never  
22 declared themselves seceded. The army had overseen arrests and prosecutions of  
23 alleged traitors in Indiana in 1864, actions that were ultimately deemed  
24 unconstitutional in the U.S. Supreme Court's post-war *Milligan* opinion. In June  
25 1866, the army had intervened in New York and Vermont to capture Irish  
26 nationalists known as Fenians who had fought against British troops in Canada and

27 <sup>26</sup> Singletary, *Negro Militia and Reconstruction*, 23-24.

28 <sup>27</sup> Sefton, *The U.S. Army and Reconstruction*, 5-106.

1 then crossed over to the United States. (Neither Henrys nor Winchesters were used  
2 in the conflicts between the Fenians and Canadian troops.) General-in-Chief  
3 Ulysses S. Grant ordered General George Meade to inform the New York and  
4 Vermont governors that they should call out volunteer militia units to capture the  
5 Fenians.<sup>28</sup>

6 45. The federal-state structure of armed enforcement that took place  
7 during the 1866 Fenian crisis was the model that U.S. authorities had in mind for  
8 the South once the southern states began creating pro-Union state militias. The  
9 hope was that the southern states would end up like New York and Vermont during  
10 the Fenian crisis: they would develop and sustain new, pro-Republican state  
11 militias that would be the primary armed force in the states, with the U.S. army  
12 playing only an ancillary role.

13 46. This plan for U.S. army-southern state militia cooperation nearly came  
14 apart beginning in April 1866. In that month, President Andrew Johnson  
15 proclaimed that a state of “cessation of hostilities” existed in all the southern states  
16 but Texas (in August 1866 he would proclaim that in Texas, too, there was a  
17 “cessation of hostilities”). Johnson thus effectively removed “war powers” as a  
18 constitutional justification for the army’s presence in the South. His move was part  
19 of his general turn against the Republican program of Reconstruction. Also in  
20 April 1866, he vetoed the Civil Rights Act of 1866, a veto that Congress overrode.  
21 Two months earlier, he had vetoed the act renewing the Freedman’s Bureau.  
22 Eventually, Congress passed a new act for the Bureau, which Johnson again vetoed  
23 but Congress overrode. Both the Civil Rights Act and the Freedman’s Bureau Act  
24 established, among other things, that the army would continue to have policing  
25 powers in the southern states. Those powers were to be used specifically to put  
26 down insurrectionaries who threatened to undermine the civil rights of Black

27 <sup>28</sup> W. S. Neidhardt, *Fenianism in North America* (University Park: The  
28 Pennsylvania State University Press, 1975), 71.

1 Americans or in any way jeopardize pro-Union citizens and institutions. The Civil  
2 Rights Act contained a military provision that empowered the army to act reactively  
3 or preemptively against any actual or anticipated insurrectionary threat.<sup>29</sup> Even  
4 though Congress was able to sustain this military provision as well as the rest of the  
5 Civil Rights Act of 1866 against Johnson's veto, the military provision was  
6 jeopardized by Johnson's declaration of a "cessation of hostilities." The declaration  
7 signaled that Johnson might not sustain the army in its duties specified by  
8 Congressional measures like the Civil Rights Act. Also in April 1866, the U.S.  
9 Supreme Court announced that it was ruling in favor of the plaintiff in the *Milligan*  
10 case (the actual opinion was not issued until January 1867). That case was  
11 narrowly about the power of the army to try civilians in areas where civil courts  
12 were operative; more broadly it was about the power of the army to have any  
13 authority at all to occupy an area ostensibly at peace.

14 47. U.S. Republican authorities moved quickly to protect their power to  
15 occupy the formerly rebel South. Secretary of War Stanton prepared an order that  
16 invoked the military provision of the Civil Rights Act of 1866 to justify continued  
17 military occupation of the South. This was a novel move, as it allowed military  
18 occupation in the absence of "war powers." The Civil Rights Act was justified not  
19 by "war powers" but by the Thirteenth Amendment abolishing slavery. A small  
20 number of Republicans, most notably Representative John Bingham, thought the  
21 Civil Rights Act needed more justification than that. For this reason, among others,  
22 Bingham pressed for a new constitutional amendment, which ultimately emerged as  
23 the Fourteenth Amendment. The resolution for the amendment was passed by  
24 Congress a few months after the Civil Rights Act and sent to the states for  
25

26 <sup>29</sup> Michael Vorenberg, "The 1866 Civil Rights Act and the Beginning of  
27 Military Reconstruction," in Christian Samito, ed., *The Greatest and the Grandest*  
28 *Act: The Civil Rights Act of 1866 from Reconstruction to Today* (Carbondale, Ill.:  
Southern Illinois University Press, 2018), 60-88.



1 ratification. Congress would ultimately declare that the Civil Rights Act of 1866  
2 was authorized by the Fourteenth as well as the Thirteenth Amendments.

3 48. The military provision of the Civil Rights Act of 1866 was not enough  
4 to put U.S. military occupation of the South on sure footing. The President still  
5 controlled the army in his capacity as commander-in-chief. Congress thus began to  
6 wrest control of the army from President Johnson. First, it passed the  
7 Reconstruction Act of 1867, which formalized military occupation and required  
8 southern states to ratify the Fourteenth Amendment in order to be readmitted to the  
9 Union. Then Congress passed measures (most notably the Tenure of Office Act)  
10 that shifted aspects of army control from the President to Congress. Then it  
11 impeached Johnson, though Johnson was ultimately acquitted by the Senate. In the  
12 meantime, the army and the U.S. Attorney General opted to take the narrowest  
13 possible reading of the Milligan decision, such that the only power deemed out of  
14 the army's hands in occupied areas was the power to try civilians if civilian courts  
15 were operative. By 1868, then, the year of the Fourteenth Amendment's adoption,  
16 the U.S. army had secured for itself a place in the southern states as a legitimate  
17 occupying force in the South. It would affirm this status with the acts of 1870 and  
18 1871 enforcing the Fourteenth Amendment as well as the Fifteenth Amendment,  
19 which had been adopted in 1870. The last of these enforcement acts, the so-called  
20 "KKK Act," was aimed directly at breaking up the Ku Klux Klan and similar  
21 insurrectionary, paramilitary organizations that terrorized Black Americans and  
22 pro-Union whites ("terror" was one of the most commonly used words of the time  
23 to describe the Klan's intent toward Black Americans).

24 49. The reason to understand this sequence of events is to appreciate the  
25 army's distinctive, unprecedented role in the era of the Fourteenth Amendment. It  
26 did not operate under martial law. It had the power to declare martial law, but in  
27 practice, it avoided using that power. Instead, it looked to pro-Republican state  
28 governors to declare martial law if martial law was deemed necessary (and such

gubernatorial declarations were extraordinarily rare during Reconstruction). Furthermore, in the wake of *Milligan*, it yielded to the states the judicial power it had wielded prior to 1866. States' attorneys and state courts were to be the main sites of judicial action, though the U.S. Attorney General reserved the power to remove cases to federal courts if they involved matters relating to civil and political rights covered by national legislation (to help centralize federal judicial activity in the South, the Department of Justice was created in 1870). During the era of the Fourteenth Amendment, then, the main role of the U.S. army was to act as an ancillary police force to the state militias or other local and state policing operations. In this capacity, the army worked with states to detect and arrest insurrectionaries and civil-rights violators. Although sometimes those arrested would stand trial in a federal court—this happened most famously in the South Carolina Ku Klux Klan trials of 1871-72—the army and agents of the Department of Justice looked to the state courts to be the primary judicial institutions of locales. As an example: President Ulysses S. Grant in 1871, in his capacity as commander-in-chief of the U.S. army, ordered all insurrectionaries in South Carolina to turn in their firearms to legitimate authorities. If insurrectionaries were found who had not turned in their weapons, they could be arrested and denied habeas corpus rights under Grant's order.<sup>30</sup> However, prosecutions and trials of such insurrectionaries going forward would be conducted by state authorities, if those authorities were known to be loyal to the United States. In its capacity as an ancillary police force to state militias, with both armed organizations committed to subduing insurrectionaries and civil-rights violators, the U.S. army sought to prevent weapons from reaching unlawful insurgent groups. Army officers relied on their

<sup>30</sup> Proclamations of President Ulysses S. Grant, in James Richardson, ed., *A Compilation of the Messages and Papers of the Presidents* (New York: Bureau of National Literature, 1897), vol. 9, pp. 4086-87 (March 24, 1871), 4089-90 (Oct. 12, 1871), 4090-92 (Oct. 17, 1871), 4092-93 (Nov. 3, 1871; this proclamation revoked suspension of habeas corpus in Marion County, South Carolina), 4093-4095 (Nov. 10, 1871).

own intelligence operators as well as private intelligence agencies like the Pinkertons to learn of arms shipments. By the terms of the Civil Rights Act of 1866 and the Enforcement Acts of 1870, the U.S. army and related military units were authorized to act preemptively to prevent insurrectionaries from making armed assaults on loyal Unionists. The seizure of weapons intended for insurrectionaries thus represented a lawful use of military authority under the Fourteenth Amendment.<sup>31</sup>

50. As a result, any southern person or combination of persons considering having Henry or Winchester rifles shipped to them faced the prospect that the U.S. army or state militia might keep the shipment from reaching them and that, even if the shipment did reach them, the policing forces could arrest them and confiscate the weapons.

## **V. FINDINGS: HIGH-CAPACITY FIREARMS DURING RECONSTRUCTION**

### **A. Overview: Henry Rifles and Winchester Repeating Rifles During Reconstruction**

51. An oft-cited scholar in legal debates over firearms contends that “the Winchester Model 1866 . . . became a huge commercial success. So by the time the Fourteenth Amendment was ratified in 1868, rifles holding more than 10 rounds were common in America.” The first part of this statement is true: the “Winchester 66” did become a commercial success. The author neglects to mention, however, that prior to the end of Reconstruction, that commercial success was due almost entirely to sales to foreign armies. Thus it does not follow that the success of the company during Reconstruction is evidence of the presence of Winchesters in the United States. Indeed, the author’s second statement, that “rifles holding more than

<sup>31</sup> No U.S. court ever denied the constitutionality of such seizures of weapons or the legislation that authorized the seizures. See Vorenberg, “The 1866 Civil Rights Act and the Beginning of Military Reconstruction.”

(continued...)

1 10 rounds were common in America” at the time of the Fourteenth Amendment, is  
2 false.<sup>32</sup>

3 52. Rifles holding more than 10 rounds made up a tiny fraction of all  
4 firearms in the United States during Reconstruction. Furthermore, as will be  
5 discussed in more detail below, possession of such rifles—legal possession, that  
6 is—was limited almost exclusively to U.S. soldiers and civilian law enforcement  
7 officers.

### 8 **B. Henrys and Winchesters in the Reconstruction-Era West**

9 53. One of the places that Henrys and Winchesters could be found during  
10 Reconstruction was in the West, though the weapons did not proliferate there at the  
11 time at anything like the scale invented by novelists and film-makers of the late  
12 nineteenth and twentieth centuries.

13 54. With the passage of the Homestead Act (1862), the end of the Civil  
14 War (1865), the completion of the first transcontinental railroad (1869), and the  
15 discovery of gold in the Black Hills of Dakota Territory, the appeal of traveling to

16 <sup>32</sup> David Kopel, “The History of Magazines holding 11 or more rounds:  
17 Amicus brief in 9th Circuit,” *Washington Post*, May 29, 2014,  
18 [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/)  
19 [history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/)  
20 (accessed September 22, 2022). Kopel’s contention also appears on page 4 of his  
21 co-authored Amicus Brief in a federal case from California, *Fyock v. City of*  
22 *Sunnyvale*, Case No. 14-15408 (9th Cir. 2015). See David B. Kopel and John  
23 Parker Sweeney, “Amici Curiae Brief for the Center for Constitutional  
24 Jurisprudence and Gun Owners of California in Support of Plaintiffs-Appellants  
25 and Supporting Reversal,” 2014 WL 2445166 (9th Cir.). For the number of Henrys  
26 and Winchesters manufactured 1861-1877, as well as the number of these rifles  
27 shipped to foreign armies, see John E. Parsons, *The First Winchester: The Story of*  
28 *the 1866 Repeating Rifle* (New York: Morrow, 1955), 48, 85, 88, 103, 116, 123.  
To understand the scale of these numbers, one should contrast them to the  
production and sales of other rifles of the era. For example, according to Parsons,  
the total number of Henrys and Winchesters manufactured in 1861-1877 was  
164,466 (this includes the 56,000 shipped to foreign armies), whereas in the same  
period, 845,713 Springfield “trap-door” single-shot rifles were manufactured. See  
“Serial Number Ranges for Springfield Armory-Manufactured Military Firearms,”  
<http://npshistory.com/publications/spar/serial-nos.pdf>, pp. 1-3; some of the data in  
this report is aggregated and printed at the Springfield Armory U.S. National Park  
Website: [https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-](https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-production-serial-numbers.htm)  
[production-serial-numbers.htm](https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-production-serial-numbers.htm).

(continued...)

1 or through the Western Territories increased. Because law enforcement was  
2 minimal in the region, and also because the U.S. army could offer travelers and  
3 settlers little protection—they were too consumed during the era with subduing  
4 Native Americans—Americans came to regard self-defense as particularly  
5 important in the region. The Winchester company tried to capitalize on the  
6 situation by touting the benefits of its rifle. The “Winchester 73” model in  
7 particular was aimed at Westerners or potential Westerners. The company  
8 emphasized that the speed and high capacity of the rifle allowed a single person to  
9 hold off a band of outlaws or hostile Native Americans.<sup>33</sup> The marketing campaign  
10 was aimed especially at Americans hoping to travel to the Western Territories. The  
11 campaign had minimal success.

12 55. Many travelers to the West carried firearms, to be sure, but a very  
13 small number of those arms were Henrys or Winchesters. Most of the accounts of  
14 privately held Winchesters during Reconstruction that I found in the research for  
15 this declaration did come from the Western Territories, but there were fewer than  
16 fifteen such accounts that were not expressly fictional. Two such accounts became  
17 legendary, mainly because the manufacturers of the Henry-Winchesters used them  
18 to advertise their rifles. One account was of two former U.S. soldiers who were  
19 part of a mining operation in the Rocky Mountains and used their Henry Rifles to  
20 defeat some raiding Blackfoot Indians. Another was of a private guard hired by  
21 Wells Fargo to accompany a cash shipment to the West; he was attacked by robbers  
22 near Nevada City and used his Henry Rifle to kill them all. It might be noted that  
23

24 <sup>33</sup> See, for example, the ad printed over three issues in the *Wyoming Leader*  
25 (March 16, April 21, May 8, 1868, always p. 4). Ads for Winchesters that said  
26 nothing of their possible purposes appeared occasionally in newspapers published  
27 in the Western Territories; see for example, a gun dealer’s ad for “Sharps and  
28 Winchester Rifles” as specialties: *Bismarck Tri-Weekly Tribune* (Dakota Territory),  
June 29, 1877, p. 4. On the post-Reconstruction invention of the myth of  
Winchesters proliferating in the Reconstruction-era West, see Haag, *The Gunning  
of America*, 179-202, 353-68.

(continued...)

1 these stories, assuming they are true, did not involve individual self-defense by  
2 ordinary civilians. They involved defense of economic enterprises by trained  
3 gunmen.<sup>34</sup> Less oft-told incidents involving Henrys and Winchesters from the  
4 Western Territories involved brutal violence between thuggish combatants. There  
5 was no heroic road warrior or “Indian fighter” in these tales, and thus they were not  
6 likely to build appeal for the rifles. Particularly gruesome were the murder-by-  
7 Winchester accounts stemming from the Horrell-Higgins feud in New Mexico  
8 Territory near the Texas border.<sup>35</sup>

9 56. Because some Henrys and Winchesters found their way to the Western  
10 Territories, and because some of the U.S. army operations against Native  
11 Americans took place in Western *states* as well as the Western Territories, Henrys  
12 and Winchesters may have ended up in the Western states during Reconstruction  
13 (these included California, Colorado, Nevada, and Oregon). However, I found no  
14 significant evidence of Henrys or Winchesters in the Western states.<sup>36</sup>

15 57. The Winchester company hoped that West-bound Americans’ desire to  
16 hunt, and not just their wish for protection, would fuel sales of their weapon. The  
17 great bison hunts on the Plains were famous by the late 1860s, and the Winchester  
18 company tried to capitalize on the craze. Its marketing effort failed. Bison-hunters  
19 preferred other models. It did not help that the most famous Western hunter of the  
20

21  
22 <sup>34</sup> Williamson, *Winchester*, 42-44.

23 <sup>35</sup> C. L. Sonnichsen, *I’ll Die Before I’ll Run: The Story of the Great Feuds of Texas* (1951; 2<sup>nd</sup> ed., New York: Devin-Adair, 1962), 125-49.

24 <sup>36</sup> Exceptions to this statement about the absence of Henry-Winchesters in  
25 western states are the state armories in these states. Reports from these armories  
26 sometimes mention the rifles. For example, the armory in the state penitentiary at  
27 Salem, Oregon in 1868 had 13 Henry rifles and zero Winchesters, compared to  
28 hundreds of other firearms. Because this was a penitentiary armory, the Henrys that  
were there necessarily were for use by law enforcement officers, not individuals  
seeking self-defense. “Penitentiary Report” to Legislative Assembly, September  
1868 (Salem, Oregon: W. A. McPherson, 1868), pp. 94-95.

(continued...)



1 time, Buffalo Bill Cody, did not use a Winchester. His famous gun, which he  
2 dubbed “Lucretia Borgia,” was a single-shot Springfield.

3 58. The Winchester company had only marginally more success trying to  
4 sell its guns elsewhere to hunters and “sportsmen,” a term used to describe not only  
5 hunters but competitive target-shooters. The only place where Winchesters caught  
6 on for hunting was in Africa, where American and European “big game” hunters  
7 wanted to shoot large animals with as many rounds as possible, in as fast a time as  
8 possible, in order to avoid being killed by the prey.<sup>37</sup> Target-shooters demanded  
9 accuracy of their guns, and potential buyers worried that a rifle built for capacity  
10 and speed would lose something in accuracy. To assuage such concerns, a  
11 Winchester model that began selling in early 1877 (the “Winchester 76”) came with  
12 the option of a “set trigger,” such that the shooter could set the trigger by moving it  
13 very slightly forward, at which point only a tiny bit of pull would set off the shot.  
14 The “set trigger” type of Winchester was more popular at shooting contests than  
15 earlier Winchesters, but it still was not as popular as other rifles, especially  
16 Remingtons and Springfields. One reason why was its price. The “set trigger”  
17 version of the Winchester was typically \$10 more than the “standard trigger”  
18 models, which already were on the expensive side (“standard trigger” Winchesters  
19 were typically 20-30% more expensive than Remingtons and Springfields).

20 59. Meanwhile, U.S. army units in the West rarely possessed Winchesters  
21 during Reconstruction. The army had continued its Civil War-era policy of non-  
22 adoption of Winchesters. Yet soldiers in the West did understand the weapons’  
23 lethality, in part because they had seen it first-hand in their skirmishes and battles  
24 with the Sioux and their allies on the Plains. U.S. soldiers in the West at first  
25

26 <sup>37</sup> My research uncovered fewer than ten accounts of African big-game  
27 hunting that appeared in U.S. publications during Reconstruction. As an example,  
28 see “Lovejoy,” “Letter from Africa,” *Fayette County Herald* (Washington, Ohio),  
Dec. 21, 1871, p.2 (by “accounts” I mean supposedly true accounts; there were  
even more accounts that were expressly fictional).



1 assumed that the Natives were getting the weapons legally from traders who were  
2 operating with the approval of the U.S. Bureau of Indian Affairs. That assumption  
3 fueled long-standing hostility of the U.S. army toward the Bureau. The main  
4 newspaper of the armed services of the time, the *Army and Navy Journal*, published  
5 a satirical piece in 1867 pretending to be a Native American expressing gratitude to  
6 the Bureau for allowing tribes to acquire single-shot guns and suggesting that the  
7 Bureau might now “give us Spencer or Henry rifles.”<sup>38</sup>

8 60. In fact, the Sioux and their allies did not get their Henrys (or  
9 Winchesters) from the Bureau. Many of the weapons had been seized from  
10 American emigrants and settlers whom the Natives had attacked. Many also had  
11 been robbed from shippers heading to or through the Western Territories.

12 61. Here it is important to understand that no matter who might want a  
13 Henry-Winchester, they were dependent on a successful shipping operation. The  
14 weapons were manufactured in New Haven, Connecticut and shipped around the  
15 country to U.S. ordnance depots, state arsenals, private gun stores, and, in rare  
16 cases, individuals (individual mail-order did not become common until the 1890s,  
17 and the first mail-order guns were shipped by Sears in the early 1900s).<sup>39</sup> There  
18 was no U.S. parcel post until 1913; all shipping was done by private companies like  
19 Wells Fargo. These companies divided up regions of the country, a legal  
20 monopolistic practice, in order to maximize profits. In practical terms, this meant  
21 that shipping costs were high, so buyers would be reluctant to ship goods that could  
22 be lost. Loss was a very real possibility when it came to shipping weapons to  
23 hostile areas. Shipping companies might use armed guards—some, as we have  
24 seen, armed with Henrys or Winchesters—but the guards stood little chance against  
25 an enemy that outnumbered them and was armed with the same type of guns. The  
26 cost of the risk was passed from the manufacturers and “jobbers” who arranged for

27 <sup>38</sup> *Army and Navy Journal*, June 1, 1867, p. 350.

28 <sup>39</sup> Williamson, *Winchester*, 178.

1 sales to the consumers. The risk-induced increase in cost was a disincentive to  
2 prospective individual or gun-store buyers in the West. This was one more factor  
3 providing a disincentive not only to potential private buyers but to the U.S. army to  
4 adopt Henry-Winchesters.

5 62. Whatever the root causes of the minimal proliferation of Winchesters  
6 among non-Natives of the West, the result was that Natives were more likely to use  
7 Winchesters than anyone else in the region. The most heavily armed Americans of  
8 the region, those of the U.S. cavalry units assigned to the Western Territories, used  
9 for the most part their army-issued single-shot Springfield rifles. Meanwhile, as a  
10 U.S. Colonel noted, Winchesters and lower-capacity repeating rifles in the late  
11 1860s transformed “the Plains Indian from an insignificant, scarcely dangerous  
12 adversary into as magnificent a soldier as the world can show.”<sup>40</sup>

13 63. The truth of that observation was borne out at the Battle of Little Big  
14 Horn in 1876. Famously, the U.S. army commanded by George Custer was wiped  
15 out by the Plains Indians. Most of Custer’s troops carried single-shot Springfield  
16 rifles. The Native Americans carried a variety of weapons, many of which were  
17 Winchesters.<sup>41</sup> One of Custer’s underlings, Marcus Reno, wrote after the battle that  
18 “the Indians had Winchester rifles and the column [of U.S. cavalry] made a large  
19 target for them and they were pumping bullets into it.”<sup>42</sup> Weaponry was not the sole  
20 reason for Custer’s defeat that day at the Little Big Horn. Still, it is worth noting  
21 that “the gun that won the West” was in the hands of Native Americans, not U.S.  
22 soldiers, at the most famous battle in the West of all time.

23  
24 <sup>40</sup> Pekka Hämäläinen, *Lakota America: A New History of Indigenous Power*  
25 (New Haven, Conn.: Yale University Press, 2019), 299. In the northwest part of the  
26 Western Territories, the Nez Perce also were fond of Winchesters. Chief Joseph  
usually kept one close at hand. See Jerome A. Greene, *Nez Perce Summer, 1877:  
The U.S. Army and the Nee-Me-Poo* (Helena: Montana Society Press, 2001), 34-42,  
310-12.

27 <sup>41</sup> Hämäläinen, *Lakota America*, 340.

28 <sup>42</sup> Haag, *The Gunning of America*, 176-77.

1           64. Humiliated by Custer's defeat, the U.S. army in the West still did not  
2 choose to adopt Winchesters after Little Big Horn. However, an increasing number  
3 of regiments in the West did act on their own to use ordnance funds to buy  
4 Winchesters. Although the army did not officially adopt the Winchester, it did all it  
5 could to keep the weapon, along with lower-capacity repeating rifles, out of the  
6 hands of the Plains Indians. Right away after Custer's defeat the army banned  
7 traders from trading any types of guns to any types of Natives, friendly or hostile.  
8 U.S. officers sought to arrest traders who had been selling Winchesters to Plains  
9 Indians against government policy.<sup>43</sup> Meanwhile, American civilians in the  
10 Western Territories demanded that Canadian authorities also intervene to keep  
11 Winchesters from Native Americans, specifically the Blackfoot.<sup>44</sup>

12           65. It is impossible to know all the reasons why the U.S. army did not  
13 adopt Henrys or Winchesters before or even soon after Little Big Horn, but one  
14 reason was the same one that had lingered on Americans' minds ever since the  
15 Henry Rifle was introduced in the early 1860s: the fear that the weapon was as  
16 dangerous to its user as it was to its intended target. The stories that manufacturers  
17 had helped circulate early on from the West about the power of the rifle to allow  
18 one person to defeat many failed to muster much enthusiasm for the weapon. It did  
19 not help that some assessments from experts were negative. At a showcase of  
20 firearms in Switzerland soon after the Civil War, a judge rendered the verdict that  
21 the rifle seemed delicate and unnecessarily lethal—"more wonderful than  
22 practical."<sup>45</sup> Back in the U.S., skeptics worried that the rifle would fail at a crucial  
23 moment or explode. When it came to Henrys and Winchesters, argued a writer for  
24 the *New York Herald*, the most widely circulating newspaper in the country, the  
25 "dangers are too many."<sup>46</sup>

26           <sup>43</sup> *Chicago Daily Tribune*, July 23, 1876, p. 4.

27           <sup>44</sup> *Chicago Daily Tribune*, April 15, 1878, p. 4.

28           <sup>45</sup> Haag, *The Gunning of America*, 70.

<sup>46</sup> "Breech-Loading Arms," *New York Herald*, Oct. 12, 1866, p. 4.

**C. Henrys and Winchesters in the Reconstruction-Era North**

66. The North was the region in the United States where Henrys and Winchesters were hardest to find, either because they were deemed too dangerous or because northerners already felt themselves well-armed. Recall that hundreds of thousands of U.S. soldiers had returned home from the Civil War with rifles in hand, almost all of the weapons Spencers or Sharps or Enfield, rarely Henrys.

67. The near-absence of Henry-Winchester rifles in the North became clear during the “Great Strike” of 1877. The “Great Strike” began as a local labor action in West Virginia and turned into a massive strike stretching from Philadelphia to Chicago. Mob violence was prevalent. In this months-long episode, during which thousands of Americans were injured and hundreds were killed, there were only two incidents that I found involving Henrys or Winchesters. In Chicago during the rioting, a U.S. soldier fired a Henry rifle in response to civilians pelting his regiment with rocks. He may purposefully have avoided shooting anyone—no one was hit. But the sound of the shot went a long way toward quieting the crowd. The soldier in question was from a regiment that had been assigned to the Western Territories but transferred temporarily to Chicago to put down the unrest. That explained why he had a Henry. His regiment likely acquired Henrys to fight Plains Indians; now he used the weapon—albeit sparingly—to subdue strikers.<sup>47</sup> In Jackson County, Kansas, just north of Topeka, railroad managers armed forty employees with Winchester rifles, ordering them to scare off the local strikers. To give the gang the veneer of a legitimate posse, the managers arranged for the local sheriff to deputize the gunmen. Violence ensued when the “posse” confronted the strikers, and at least one of the strikers was killed, though not necessarily by a Winchester.<sup>48</sup>

<sup>47</sup> Robert V. Bruce, *1877: Year of Violence* (1959; repr., Chicago: Quadrangle Books, 1970), 251-52.

<sup>48</sup> “A Tough Customer,” *St. Louis Globe-Democrat*, Oct. 1, 1877, p. 4.

1           68. In general, however, Henrys and Winchesters were rare to find among  
2 northerners during Reconstruction. They were sometimes mentioned in ads  
3 displayed in northern publications aimed at hunters and target-shooters. If the ads  
4 were any indication of the target audience, the hoped-for buyers of the rifles were  
5 elites—not the types who showed up during the mobbing of the Great Strike of  
6 1877—and they were interested in peaceful shooting contests, not fending off  
7 potential violent attackers.<sup>49</sup> Reports from state adjutant generals in the North  
8 sometimes show Henrys and Winchesters in arsenal inventories, but these guns  
9 were always far outnumbered by the more popular rifles of the era in the region—  
10 Sharps, Spencers and Springfields.

11           69. Beginning in about the mid-1870s, northerners became more interested  
12 in owning Winchesters and modern rifles in general, not for purposes of self-  
13 defense but for purposes of collective defense of their communities and states. This  
14 was the period when National Guard units came into being, beginning in the  
15 northern states. They were in effect state militias. The engine that drove their  
16 creation was not a fear of tyranny or of insurrection but a nationalistic fervor fueled  
17 in particular by the nation’s Centennial, which began to be celebrated in the early  
18 1870s even before the major exhibitions and commemorations of 1876.<sup>50</sup> With the  
19 rise of this movement came a perceived business opportunity for the Winchester  
20 company, which began placing ads for their rifles in northern newspapers,

21  
22           <sup>49</sup> See, for example, an ad for many types of guns, including “Henry’s  
23 Sporting Rifle,” in Wilkes’ *Spirit of the Times: The American Gentleman’s  
Newspaper*, March 24, 1866, p. 59 (the ad was reprinted in the same weekly  
publication irregularly through June 16, 1866).

24           <sup>50</sup> Eleanor L. Hannah, “Manhood, Citizenship, and the Formation of the  
25 National Guards, Illinois, 1870-1917” (Ph.D. diss, University of Chicago, 1997),  
26 15-16. Hannah’s dissertation is crucial for countering the assumption, now rejected  
27 by historians, that the rise of the National Guard movement in the northern states  
28 was a reaction to events in the South of the 1870s or to the Great Strike of 1877.  
See also, Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the  
Origins of Gun Control in America* (New York: Oxford University Press, 2006),  
196-97.

(continued...)

1 magazines, and gun catalogs. The greatest number of ads appeared in western  
2 Pennsylvania.<sup>51</sup> The ads seem to have had some effect. A newspaper published in  
3 northwestern Pennsylvania reported in October 1877 that “Winchester rifles are  
4 becoming quite fashionable in this section, and are rapidly displacing the old  
5 double-barreled rifles. . . . The Remington rifle is highly spoken of by those who  
6 have used it, but it is not a repeater, or ‘stem-winder,’ and so the Winchester is  
7 ahead.”<sup>52</sup>

8 70. The rise of National Guard units in northern states in the late 1870s  
9 inspired private armed companies to form, drill, and parade. One of these groups  
10 was the Lehr und Wehr Verein of Chicago, Illinois, led by the Socialist activist  
11 Henry Presser. Presser’s company paraded one day in the spring of 1879. They  
12 carried rifles—not Winchesters but Springfields. Socialist sympathizers nearby  
13 joined with the group, and Presser was arrested and tried for organizing a private  
14 militia. His case ended up in the Supreme Court, which ruled in the *Presser* case in  
15 1886 that the armed company’s actions were indeed unlawful.

#### 16 **D. Henrys and Winchesters in the Reconstruction-Era South**

17 71. In the South during Reconstruction, high-capacity firearms proliferated  
18 far more than in any other region of the country. The reason for this proliferation is  
19 clear: Winchester Repeating Rifles were the preferred weapon of two large state  
20 militias, those of Louisiana and South Carolina, that were organized to put down  
21 insurrection against state and national authority as well as terrorism against Black  
22 Americans.

23 72. The story of the South Carolina state militia getting armed with  
24 Winchesters begins with the inauguration of Robert K. Scott as the state’s governor  
25 in 1868. Scott, a white man, was a pro-Reconstruction Republican. He had been

26  
27 <sup>51</sup> See, for example, *James Bown and Son’s Illustrated Catalogue and Price*  
*List*, 29<sup>th</sup> annual ed. (Pittsburgh, Penn., 1877), 33.

28 <sup>52</sup> *The Forest Republican* (Tionesta, Pennsylvania), Oct. 3, 1877, p. 4.

1 born in Pennsylvania, he grew up in Ohio, and he became a high-ranking officer in  
2 the U.S. army during the Civil War. After the war, he was an officer in the  
3 Freedman's Bureau. As Governor of South Carolina, he endorsed and helped  
4 arrange the creation of a pro-Republican state militia open to Black Americans and  
5 pro-Republican whites.

6 <sup>73.</sup> The state act creating the state militia was adopted in 1868. The  
7 militia was always a work-in-progress, so it is impossible to know exactly how  
8 many men served in it at any given time. A reasonable estimate is that 1000 men  
9 were in the militia by 1869. Scott hoped that the force would grow eventually to  
10 6000. Although the militia was open to pro-Republican whites, most of the  
11 members were Black Americans. The state did not have enough arms to supply the  
12 men. In the summer of 1869, the state's adjutant general traveled to Washington,  
13 D.C. to arrange with the U.S. War Department for an allotment of funds to pay for  
14 arms for the state militia. This arrangement was a restoration of a policy that had  
15 long been in place but had often fallen into disuse: the U.S. War Department would  
16 pay each state an annual allotment to sustain its state militia. With the funds that the  
17 South Carolina adjutant general received in mid-1869, he helped arrange the  
18 purchase of hundreds of guns, both Winchesters and Springfields.<sup>53</sup>

19 <sup>74.</sup> By August 1869, Winchesters had begun to arrive in South Carolina,  
20 earmarked for members of the state militia. In the middle of that month, a company  
21 of Black American state militiamen armed with Winchesters appeared at a wharf in  
22 Charleston. The occasion was the arrival of a white baseball team from Savannah,  
23 which was scheduled to play a white team in Charleston. A few days earlier, the  
24 team had made the same trip. But when it arrived, Black American civilians had  
25 decided to disrupt the match as a form of protest. They showed up on the streets,  
26

27 <sup>53</sup> Richard Zuczek, *State of Rebellion: Reconstruction in South Carolina*  
28 (Columbia: University of South Carolina Press, 1996), 75; Singletary, *Negro Militia and Reconstruction*, 20-21.



1 got in the way of the white players as they made their way to the field, and hurled  
2 insults. The team turned around and headed back to Savannah. This time, on  
3 August 15, the Mayor of Charleston was prepared to make sure that things went  
4 smoothly—though not in a way that whites in the city would approve of. He had  
5 given the order for the company of black state militiamen to arrive at the wharf and  
6 escort the Savannah baseball team to the playing fields. The game took place. But  
7 white Democrats in the city as well as the rest of the state (and throughout the  
8 whole of the former Confederacy) were furious.<sup>54</sup> Meanwhile, Black Americans  
9 throughout the state celebrated the role that members of their race would play in the  
10 keeping of the peace.

11 75. From late 1869 to early 1871, companies of black state militiamen  
12 armed with Winchesters appeared regularly across South Carolina. At first,  
13 Governor Scott was thrilled with the organization. On March 29, 1870, he  
14 delivered a speech that extolled the Black-American dominated militia as the best  
15 way to ensure that peace would return to the state and that future elections would be  
16 fairly held. He particularly recommended that state militias be armed with  
17 Winchesters. He had seen first-hand how these weapons intimidated potentially  
18 violent protesters even without being fired. His neighboring state of Georgia  
19 should have such a militia staffed with blacks and armed with Winchesters, Scott  
20 advised. “I tell you the Winchester rifle is the best law that you can have there,” he  
21 declared. Georgia, one of the states that had had its pro-Democrat, anti-black  
22 militia dissolved by Congress in 1867, never did create a new militia. Scott knew  
23 that it wouldn’t. His speech was meant to announce not only to South Carolina but  
24 to neighboring states that the old ways of the Confederacy were gone for good.  
25 Members of the opposition to Scott and the Republicans in South Carolina became  
26

27 <sup>54</sup> *Washington Evening Star*, Aug. 16, 1869, p. 1.  
28

(continued...)

1 furious. Many called him “Winchester Scott” and bewailed “Scott’s Winchester  
2 Rifle tactics.”<sup>55</sup>

3 76. During the election season of 1870, Scott decided that he had erred.  
4 Opposition papers regularly reprinted his “Winchester” speech and attacked Scott  
5 as a tyrant trying to stir up a race war. Much more troubling was the fact that state  
6 chapters of the Ku Klux Klan began plotting a response to Scott’s speech and the  
7 existence of the militia.

8 77. The Klan had decided to meet Winchesters with Winchesters. They  
9 sent agents to the North to buy crates of Winchesters and ship them to South  
10 Carolina in crates with false labels (“Agricultural Implements” said one; “Dry  
11 Goods” said another). The state militia and the U.S. army were able to intercept  
12 some of the crates, but others arrived at their destination. The Klan and auxiliary  
13 white supremacist groups distributed the weapons to Scott’s opponents in towns  
14 across the state.<sup>56</sup> Violence broke out across the state. That was a regular  
15 occurrence during election season, but this time the lethality was more severe than  
16 usual. Both sides had Winchesters.

17 78. With the help of the intervention of the U.S. army and his own state  
18 militia, Scott was able to win re-election in 1870. Almost immediately he tried to  
19 draw down the violence in the state by attempting to remove Winchesters from the  
20 population. Aided by U.S. army units, his administration attempted to confiscate as  
21 many Winchesters as they could from insurrectionary groups like the Klan. Then  
22 he asked those state militiamen who were holding onto their Winchesters instead of  
23 storing them in state arsenals to turn the weapons in. Some Winchesters did end up  
24 coming back into state arsenals, either by way of confiscation from Klansmen or  
25 voluntary submissions by militiamen. But most of the Winchesters stayed in  
26 circulation. Scott suspended the state militia.

27 <sup>55</sup> See, for example, *Charleston News*, Oct. 17, 1870, p. 2.

28 <sup>56</sup> Zuczek, *State of Rebellion*, 79-80.

1           79. In early 1874, South Carolina was again the site of violent uprisings  
2 from insurrectionists, and the pro-Republican government responded by re-forming  
3 the state militia. The adjutant general of the state reported that he barely had any  
4 guns for the men. In fact, a report he had issued the year before declared that there  
5 were 627 Winchesters in state arsenals. Probably the official was worried that  
6 widespread arming of Black Americans and white Republicans with Winchesters  
7 would create a mini-civil war like the one in 1870.<sup>57</sup> The re-activated state militia  
8 was poorly organized and poorly armed. For armed support between 1874 and  
9 1876, the Republican administration of the state relied mostly on the U.S. army.

10           80. Then, in 1876, came the final battles between pro-Republican, U.S.-  
11 authorized armed men (the U.S. army units and state militia) and the  
12 insurrectionary opposition forces, the “Red Shirts.” Of the many reasons that the  
13 opposition forces could be categorized as insurrectionary, perhaps the most obvious  
14 was that they regularly stole weapons, including Winchesters, from state arsenals.<sup>58</sup>  
15 When the voting in 1876 was over, the two sides in the struggle each declared  
16 victory. Two governors then existed, and since no one was going to accept a  
17 resolution of the crisis by law, the state was in political chaos, with armed groups  
18 on each side ready to go to battle. When companies of armed men marched for  
19 their respective candidates, plenty of them carried Winchesters. Only some of  
20 those Winchesters had been obtained legally. Those carried by the “Red Shirts”  
21 had almost certainly been stolen from state depots.

22           81. The Louisiana state militia was created in 1870. The story of how  
23 Louisiana state militiamen ended up armed with Winchesters starts before the  
24 organization was created. In 1868, the New Orleans metropolitan police force was  
25 re-organized under Republican leadership. It now used “Metropolitans” as its  
26 nickname. Its members included Black Americans as well as whites of varying

27           <sup>57</sup> Zuczek, *State of Rebellion*, 140-41.

28           <sup>58</sup> Zuczek, *State of Rebellion*, 171.

1 ethnicities, the city being one of the most ethnically diverse in the country. The  
2 number of Metropolitans in 1868 was small—perhaps just over 100—but by 1870  
3 that number was close to 700. During its earliest years, from 1868 to 1870, the  
4 Metropolitans’ superintendent, A. S. Badger, armed many of the men with  
5 Winchesters. In 1870, Governor Henry Warmoth engineered the creation of the  
6 state militia. Warmoth envisioned a state militia that would be composed of 2,500  
7 Black Americans and 2,500 white former Confederates. The Confederates, in  
8 theory, would be loyal to the United States and thus supportive of Reconstruction  
9 programs created by Republicans. Anyone could see that the two sides of this force  
10 would not fit together easily. To help foster something approaching unity across  
11 the state militia, Warmoth appointed James Longstreet, a former Confederate  
12 General, as head of the state militia. As part of the act creating the state militia, the  
13 New Orleans Metropolitans were incorporated into the state militia. The  
14 Metropolitans after 1870 were thus both an urban police force and a company of  
15 state militiamen. In this latter role, they were authorized to operate outside of city  
16 limits. The Metropolitans were the best-trained unit in the state militia. Because  
17 many of their number carried Winchesters, they were also the best armed.<sup>59</sup>

18 82. Between 1870 and 1874, politics in Louisiana was multifaceted and  
19 ever-shifting. Warmoth regularly changed his political stances, outside blocs  
20 suddenly gained inside influence, and through it all, pro-Democratic factions,  
21 supported by armed “White Leagues,” tried to resurrect the Old South on the soil of  
22 Louisiana. In 1872, William Kellogg won the governorship. Kellogg was a  
23 Republican, one more radical than Warmoth and more in line with the Republicans  
24 in the U.S. Congress. Warmoth in 1872 had sided with John McEnery, a former  
25

26  
27 <sup>59</sup> Dennis C. Rousey, *Policing the Southern City: New Orleans, 1805-1889*  
28 (Baton Rouge: Louisiana State University Press, 1996), 130-31; Singletary, *Negro Militia and Reconstruction*, 69-70.

1 Confederate, an anti-Reconstruction Democrat, and a leading voice for state  
2 redemption.

3 83. The state militia, composed of a group loyal to the Warmoth-McEnery  
4 faction and a group loyal to Kellogg, was rendered ineffective after 1872 by its lack  
5 of cohesion. Individual units within the state militia were nonetheless important, as  
6 they were the only legitimate state-level armed forces. Of these units, the  
7 Metropolitans remained the most effective and best armed, as they still carried  
8 Winchesters, whereas most of the other units did not. In politics, whoever  
9 controlled the Winchester-armed Metropolitans would always have an advantage  
10 because, as Governor Scott of South Carolina had said in 1870, “the Winchester  
11 rifle is the best law that you can have.” By late April 1873, William Kellogg, the  
12 newly elected Governor, had established control of the Metropolitans.  
13 Unfortunately, he had established that control too late to use the Metropolitans to  
14 help avert the worst racial massacre that the state had ever seen, probably the worst  
15 racial massacre of Reconstruction: the Colfax Massacre of April 13, 1873.

16 84. The tragedy of the Colfax Massacre has been the subject of much  
17 historical study, but never from the perspective of a Winchester Repeating Rifle.  
18 The combatants at Colfax, in Grant Parish, about 200 miles northwest of New  
19 Orleans, consisted of one legitimate armed force and one illegitimate one. The  
20 legitimate armed force was a unit of the state militia led by William Ward, a Black  
21 American who had fought for the U.S. during the Civil War. More than 100 of  
22 Ward’s men, perhaps more than 150, would be murdered at Colfax. The  
23 illegitimate armed force was a “posse” deputized by two local men, one who  
24 claimed to be a judge and one who claimed to be a sheriff. In fact, as all in the  
25 “posse” knew, the so-called judge and so-called sheriff had held those positions  
26 under the former governor, not under the current governor, who had denied them  
27 commissions that would have kept them in office. The claim of the “judge” and  
28 “sheriff” was that the former governor had in fact won the 1872 election and thus

1 that they held their positions legitimately. (Election-result denial is not a new  
2 phenomenon; it was rampant in the South during Reconstruction.) Years later,  
3 when the Colfax episode came before the U.S. Supreme Court in the form of the  
4 *Cruikshank* case, Justice Bradley, author of the controlling opinion, declared that  
5 leaders of the so-called posse were private citizens, not state officers. Bradley was  
6 technically right. But at the time of the Colfax Massacre, the lead murderers had  
7 donned masks of state-legitimated authority. Neither the legitimate nor the  
8 illegitimate side at Colfax carried Winchesters. But if William Ward had had his  
9 way, his side would have had them.

10 85. Two days before the massacre, Ward had left Colfax for New Orleans.  
11 He knew that violence might erupt in Colfax, and he wanted to persuade Governor  
12 Kellogg to send military support. Almost certainly, Ward was going to ask Kellogg  
13 to send the Winchester-armed Metropolitans. Ward never made it to New Orleans.  
14 Even if he had, the Metropolitans could not have made it to Colfax in time to stop  
15 the massacre. They might not have been willing to go—it would be another ten  
16 days beyond the massacre before their loyalty to Kellogg was cemented. The  
17 important point amid all these hypotheticals is this: William Ward believed that a  
18 cadre carrying Winchesters was the best chance his men had.

19 86. By October 1873, the Metropolitans had pledged their loyalty to  
20 Kellogg, and Kellogg had helped secure for them and other state militia units  
21 hundreds of new Winchesters. Kellogg dispatched the Metropolitans to Grant  
22 Parish, the site of the Colfax Massacre, to reestablish control of the area for the  
23 Republicans. They and their Winchesters arrived at the end of the month—more  
24 than 25 weeks after William Ward had hoped they would come.<sup>60</sup>

25 87. The power of the Metropolitans, along with their Winchesters, would  
26 soon stripped away. Opponents of Kellogg gained control of the Metropolitans’

27 <sup>60</sup> *New Orleans Republican*, June 13, 1873, p. 1; *Ouachita Telegraph*,  
28 October 24, 1873, p 1.

1 Board by early 1864. They reduced the numbers of the force and limited their  
2 geographical range to New Orleans and its outskirts. If violence broke out in a  
3 rural area like Grant Parish, there would be nothing that the Metropolitans could do  
4 about it. Then, on September 14, 1874, came the final blow: the Battle of Liberty  
5 Place, fought in the heart of New Orleans. Thousands of White Leaguers launched  
6 a coordinated attack on the city. Some of them may have been carrying  
7 Winchesters, but none of the reports from that day mentioned Winchesters in their  
8 hands. The Metropolitans had Winchesters, of course, but they were outnumbered  
9 more than 10 to 1 and easily overwhelmed. After the White Leaguers had  
10 demonstrated their superior force, Governor Kellogg knew that he might soon be  
11 removed, so he engineered a compromise that kept him in office. Part of the deal  
12 was the disbandment of the state militia. Thus ended the prospect of a reign-by-  
13 Winchester Republican regime in Louisiana.<sup>61</sup>

14 88. In the brief time that Winchesters were in the hands of southern state  
15 militias, the rifles showed that they could do much to intimidate the forces of white  
16 supremacy and insurrection. But there was a dark flip side to the positive quality of  
17 this particular high-capacity firearm.

18 89. Those opposed to the state militias and to Reconstruction in general  
19 used the presence of Winchesters in state militias as fodder to attack all  
20 Republicans and especially Black Americans. At a rally in April 1870, a Georgia  
21 Black-American leader, Simeon Beard, pleaded for more guns so blacks could have  
22 their own militia rather than relying on the U.S. army. “We don’t want soldiers; we  
23 want the power to raise a militia; we want guns put in our hands, and we will see  
24 whether we cannot protect ourselves. Give us this, and we will give you the State  
25 of Georgia evermore.” In response, a redeemer newspaper editor mocked Black  
26 Americans like Beard who clamored “lustily for arms,” including “Winchester

27  
28 <sup>61</sup> Rousey, *Policing the Southern City*, 155-56.



1 rifles.” The redeemer editor then brought up the South Carolina experiment with  
2 Winchester-armed state militias as evidence that the lives of ordinary white people  
3 were in grave danger: “There are thousands of white people in this State who have  
4 no arms at all, not even a pistol, while there is not one negro in three who does not  
5 own some sort of firearm. They are armed now-fully armed. It is the white people  
6 who need arms, not the negroes.”<sup>62</sup>

7 90. The Winchester was as much a symbolic weapon as a real one in the  
8 battles between Republicans and Redeemers in the Reconstruction-era southern  
9 states. Republicans saw the gun as the emblem of power—the sign that the cause  
10 of Reconstruction had a strong, locally controlled force behind it. The Redeemers  
11 saw the gun as evidence of the Republicans’ tyranny and barbarity. In Texas,  
12 Democrats opposed to Reconstruction howled that there must be “no money, no  
13 Winchester rifles and ammunition” for Republicans—this despite the fact that  
14 Republicans in the state had never suggested arming themselves with  
15 Winchesters.<sup>63</sup>

16 91. In terms of real as opposed to imagined Winchesters, even though the  
17 weapons in Louisiana and South Carolina were housed under guarded armories,  
18 they could still end up in the hands of insurrectionaries or criminals. In Louisiana,  
19 as in all the states of Reconstruction, there were internal, often violent conflicts  
20 over the control of the state government. By various means, from outright theft to  
21 the legitimate winning of a state election, the opposition to a Republican  
22 government in a state like Louisiana could gain access to Winchesters. Once these  
23 weapons were in the hands of insurrectionary groups, they could end up with  
24 anyone, including an outlaw with no particular political persuasion. That is  
25 probably how a Winchester ended up among a large cache of arms held by the

26 \_\_\_\_\_  
27 <sup>62</sup> *Georgia Weekly Telegraph and Georgia Journal & Messenger*, April 5,  
1870, pp. 4, 8.

28 <sup>63</sup> *The Weekly Democratic Statesman* (Austin, Texas), August 24, 1871, p. 2.

1 husband-wife team known as the Guillorys, a pair of marauding thieves who went  
2 on a rampage near Opelousas, Louisiana in the late summer of 1873. When a posse  
3 caught up with them, it easily dispatched the couple, killing the husband and  
4 seriously wounding the wife.<sup>64</sup>

5 92. By 1874, all of the state militias had been disbanded. Redeemers—  
6 those in each state wanting state redemption from Reconstruction—had been  
7 against the state militias from the start and were glad to see them go. By the end of  
8 Reconstruction, all of the southern states had reverted to their pre-1867 militia  
9 system, 1867 being the year that the U.S. Congress abolished all southern militias  
10 except those in Arkansas and Tennessee.<sup>65</sup> Under the renewed militia system,  
11 volunteer militias could form on their own with the explicit or implicit approval of  
12 state governors. Because most of the southern state governments after 1874 were  
13 ruled by pro-redemption Democrats, most of the militias that formed after 1874  
14 were of the sort that would have been considered insurrectionary by pro-  
15 Reconstruction Republicans in the states as well as by the Congressional  
16 Republicans who had abolished such militias in 1867.

17 93. The three states that were not controlled by Redeemers after 1874 were  
18 Florida, Louisiana, and South Carolina. In Louisiana and South Carolina, the 1876  
19 state elections were disputed (so, too, quite famously, was the national election of

20 <sup>64</sup> “Another Battle,” *The Opelousas Journal*, Aug. 29, 1873, p. 3. A side note  
21 to the episode: No one in the posse had a Winchester, and the Guillorys in the  
22 exchange of gunfire opted not to use their Winchester, only their low-capacity rifles  
and shotguns.

23 <sup>65</sup> The Texas Rangers claimed to be a state militia loyal to the U.S. right up  
24 until it was disbanded in 1877, but by 1874, if not earlier, the group was clearly on  
25 the side of the Democrats in the state. A number of Democrats in 1877 pleaded  
26 with the state government not to disband the Rangers. One wealthy Democrat in  
27 1877 even offered the state government a voluntary donation of Winchesters for the  
28 state militia (the militia had not used Winchesters prior to that point). The state  
government rejected the offer and disbanded the militia. See Robert M. Utley, *Lone  
Star Justice: The First Century of the Texas Rangers* (New York: Oxford  
University Press, 2002), 169-70; Walter Prescott Webb, *The Texas Rangers: A  
Century of Frontier Defense* (1935; 2<sup>nd</sup> ed., Austin: University of Texas Press,  
1965), 292-93.

(continued...)

1 1876). In both states, as a result, the two contending sides, pro-redemption  
2 Democrats and pro-Reconstruction Republicans, claimed victory and claimed that  
3 their gubernatorial candidate was the legitimate governor of the state. In each of  
4 these states, therefore, there were two governors. Meanwhile, in Florida, there was  
5 no dispute over the governor's office, but there was conflict nonetheless because  
6 the electoral board of the state was controlled by pro-Reconstruction Republicans  
7 while the rest of the state government was controlled by pro-redemption  
8 Democrats.<sup>66</sup> As a result of the internal conflicts within Florida, Louisiana, and  
9 South Carolina, the U.S. army dispatched troops to the capitals of each state. The  
10 troops were intended to "keep the peace" in all the states, to ensure that the pro-  
11 Reconstruction Republican governors of Louisiana and South Carolina were  
12 accepted as the only legitimate governors of the states, and to protect the Florida  
13 electoral board from being disbanded by pro-redemption Democrats.

14 94. The circumstances described above had important consequences for  
15 who came to possess Henrys and Winchesters by the end of Reconstruction. In  
16 Louisiana and South Carolina prior to 1874, these high-capacity firearms were  
17 possessed and regulated by pro-Reconstruction Republicans, who possessed them  
18 specifically for the purpose of state defense against armed insurrectionaries allied  
19 with pro-redemption Democrats. Once pro-redemption Democrats in these states  
20 after 1874 claimed that their "governor" was the only legitimate governor of the  
21 state—a position supported by most whites in each state—the "governor" in  
22 question used his alleged authority to distribute Winchesters held in state armories  
23 to pro-redemption volunteer militia groups. In Louisiana, the pro-redemption  
24 groups known as White Leaguers in 1876-77 marched through the streets of New  
25 Orleans demanding that their "governor," Francis T. Nicholls, be recognized as the  
26

27 <sup>66</sup> Jerrell H. Shofner, "Florida Courts and the Disputed Election of 1876,"  
28 *Florida Historical Quarterly*, 48 (July 1969), 26-46.

(continued...)

1 sole governor of the state. At least 500 of the White Leaguers, but probably  
 2 hundreds more, carried Winchester rifles.<sup>67</sup> According to a Black American who  
 3 later testified about events in New Orleans at the time, some of the White Leaguers  
 4 not only paraded with their Winchesters but also wore their old Confederate  
 5 uniforms.<sup>68</sup> The U.S. army regarded these marchers as insurrectionaries.

6 95. A similar situation played out in South Carolina, though there, the pro-  
 7 redemption Democrats were known as Red Shirts. Beginning in 1874 and  
 8 continuing through 1876, South Carolina Red Shirts created volunteer militias that  
 9 obtained Winchesters from pro-redemption authorities in the state government.  
 10 There were many Winchesters to be had in that state, as the pro-Reconstruction  
 11 Governor Robert “Winchester” Scott back in 1869-1870 had purportedly ordered  
 12 thousands of them. The exact number that Scott had acquired remains in dispute.<sup>69</sup>  
 13 Whatever the number was, it seems that only a few hundred ended up in the hands  
 14 of Red Shirts in the 1874-76 period, though that was still a few hundred more than  
 15 Republicans of the era thought was legal.<sup>70</sup>

16 96. Despite these developments, the total number of Henrys and  
 17 Winchesters in the southern states during Reconstruction remained small relative to  
 18 firearms in general in the country—no more than 8,000, I would estimate.<sup>71</sup>

19 <sup>67</sup> *Chicago Daily Inter Ocean*, January 12, 1877, p. 1; *New Orleans*  
 20 *Republican*, March 13, 1877, p. 2.

21 <sup>68</sup> Testimony of William Murrell, *Report and Testimony of the Select*  
 22 *Committee to Investigate the Causes of the Removal of the Negroes from the*  
*Southern States to the Northern States* (Washington, D.C.: Government Printing  
 Office, 1880), pt. 2, p. 521.

23 <sup>69</sup> During the U.S. Congressional investigations into Klan activities,  
 24 investigators tried to ascertain how many Winchesters had actually arrived in South  
 25 Carolina for Scott’s militia; they failed to learn what the number was, though one  
 26 witness did confirm that the Winchesters that did arrive there were intended for the  
 27 state militia, including the Black Americans among them. See 42<sup>nd</sup> Cong., 2<sup>nd</sup> sess.,  
 “Affairs in Insurrectionary States,” vol. 3 (South Carolina), *U.S. Congressional*  
*Serial Set* (1871), p. 467; and *ibid.*, vol. 4 (South Carolina), p. 767.

28 <sup>70</sup> Zuczek, *State of Rebellion*, 140-41, 170-71 (some of the Winchesters were  
 referred to as “militia guns”; see *ibid.*, 171).

<sup>71</sup> This estimate is based on the assumption that all 6,000 Winchesters that  
 (continued...)

1 Equally important, almost all of these high-capacity firearms were in the hands of  
2 law enforcement officers, either U.S. soldiers, pro-Reconstruction militias, or pro-  
3 Redemption militias. These last set of armed bodies were illegitimate, to be sure—  
4 chapters of the KKK were among them—but, importantly, even they regarded it  
5 essential to claim that it was their status as militiamen, and only that status, that  
6 legitimated their possession of high-capacity firearms.

7 97. With only a few exceptions (fewer than five), all reliable reports in  
8 which Henrys or Winchesters were mentioned in accessible records from the  
9 Reconstruction South indicate that they were regarded solely as firearms for  
10 legitimate law enforcement officers.<sup>72</sup> An example of an exception comes from  
11 Marianna, Florida in September 1869. There, a group of about twenty-five Black  
12 Americans, including women and children, were having a barbecue. From the  
13 woods nearby an unseen assailant fired “thirteen or fourteen shots in rapid  
14 succession,” killing and wounding many of the party. The U.S. officer who later  
15 reported on the episode assumed that the assailant had used a Henry rifle because of  
16 the speed and volume of the shots fired. He wrote to his superior asking for a  
17 “first-class detective” to be sent to the town to investigate who the perpetrator or  
18 perpetrators might be. “If detectives can’t be furnished,” he added, “a few Henry  
19 rifles would have an excellent moral effect here.”<sup>73</sup>

20 98. At least some state-level law enforcement officials outside of  
21 Louisiana and South Carolina ended up with Henrys or Winchesters. A pro-  
22 Governor Scott ordered for the South Carolina state militia were delivered (the  
23 exact number delivered is unknown, and most likely it is lower). When this number  
24 is combined with the roughly 1,000 Winchesters used to arm the Metropolitans in  
Louisiana over a six-year period, along with perhaps another 1,000 stolen from U.S.  
army depots, the sum is 8,000.  
25 <sup>72</sup>This declaration does not accept as evidence second- or third-hand rumors  
of Henrys or Winchesters being present, though even such rumors prior to 1870  
were infrequent.

26 <sup>73</sup>J. Q. Dickinson to “Hamilton,” in 42<sup>nd</sup> Cong., 2<sup>nd</sup> sess., “Affairs in  
27 Insurrectionary States,” vol. 13 (Florida), *U.S. Congressional Serial Set* (1871), pp.  
28 289-90.

(continued...)

1 Republican jailer in a sheriff's office in Alabama was able to use a Winchester to  
 2 fend off attacking Klansmen in January 1871.<sup>74</sup> In 1873, a dozen men in  
 3 southwestern Texas deputized to fight Native Americans near the Mexican border  
 4 were successful in subduing the Natives and, in reward, were presented by the state  
 5 legislature with Winchester rifles (they had not used Winchesters to fight the  
 6 Natives, though the Natives that they fought might well have used Winchesters).<sup>75</sup>  
 7 The most revealing example comes from 1875 Mississippi, in the testimony of  
 8 Sheriff John Milton Brown of Coahoma. Brown was the first Black American  
 9 sheriff anywhere in Mississippi. He reported that Black Americans in his region  
 10 had no guns and implied that they had been ordered to turn in their arms to the  
 11 white insurrectionaries who controlled most of the state. Brown, though, had not  
 12 turned in any weapons because he believed that his position as sheriff allowed him  
 13 to keep his weapons. As he told an investigator, he had "one Henry rifle" and he  
 14 thought that he "was justified in having that, because I was sheriff."<sup>76</sup>

15 99. Americans have long disputed and no doubt will continue to dispute  
 16 the meaning, implications, and correctness of the U.S. Supreme Court's two earliest  
 17 "Second Amendment" opinions, which were offered during or soon after  
 18 Reconstruction: *U.S. v. Cruikshank* and *Presser v. Illinois*.<sup>77</sup> But one issue  
 19 regarding those cases is beyond dispute: they did not involve high-capacity  
 20 firearms. There were no Henrys or Winchesters at Colfax on the tragic day of the  
 21 massacre there in 1873. There were none in the hands of the military companies

22  
 23 <sup>74</sup> 42<sup>nd</sup> Cong., 2<sup>nd</sup> sess., "Affairs in Insurrectionary States," vol. 8 (Alabama),  
*U.S. Congressional Serial Set* (1871), pp. 414-15.

24 <sup>75</sup> *Texas Session Laws*, 13th Legislature, Regular Session, General Laws,  
 chap. 187 (March 28, 1873), pp. 225-26.

25 <sup>76</sup> 46<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Rep. 693, pt. 2 "Investigation of Causes of  
 26 Migration of Negroes from Southern to Northern States," *U.S. Congressional Serial*  
*Set* (1879-88), 357.

27 <sup>77</sup> *U.S. v. Cruikshank*, 92 U.S. 542 (1875); *Presser v. Illinois*, 116 U.S. 252  
 28 (1886).

(continued...)



1 that marched on that spring day in Chicago in 1879—the episode that would lead to  
2 the 1886 *Presser* decision (Presser’s men carried single-shot Remington rifles).<sup>78</sup>  
3 On the question of whether the law could treat high-capacity firearms differently  
4 from other types of weapons, the Reconstruction-era Justices had nothing to say.  
5 But the land they lived in, the land they ruled over, was one where high-capacity  
6 firearms were held only by a select few, almost all of whom were U.S. soldiers or  
7 civilian law enforcement officers sworn to uphold the U.S. government. These  
8 gunmen held their distinctive weapons not to defend themselves as individuals from  
9 imagined foes but to defend their state and country against all-too-real criminals  
10 and insurrectionaries.

11 100. Many of these gunmen were Black Americans, specifically the Black  
12 American men who made up the largest contingents of southern state militias.  
13 Serving in these militias was one of many ways that Black Americans demonstrated  
14 their gun-bearing rights. Other ways that this right was demonstrated are well  
15 known to scholars: Black Americans helped make sure that the U.S. government  
16 and state authorities overturned white supremacist efforts to ban blacks from  
17 militias, deny them access to firearms, or seize their firearms (these efforts had been  
18 embodied in the southern state Black Codes of 1865-67, which were overturned by  
19 the Civil Rights Act of 1866 and the Fourteenth Amendment of 1868). It is worth  
20 noting, though, that a Black American who carried a Winchester for a state militia  
21 was different from the much larger population of Black Americans who did not  
22 belong to state militias. The Winchester-toting black militiaman held his gun only  
23 with the authorization of and regulation by the state government. He did not own  
24 his gun. It belonged to the state. It was supposed to be in an armory, not at a  
25 private home, when not in militia-use. Hypothetically, if Black Americans wanted  
26 Henrys or Winchesters at their homes, they might lawfully have been allowed to

27  
28 <sup>78</sup> “The Reds,” *Chicago Daily Tribune*, March 23, 1879, p. 7.



1 have them there. But this hypothetical scenario is irrelevant. Southern Black  
2 Americans for the most part lacked the means to buy Winchesters. Mostly rural  
3 workers, their wages were notoriously low—sometimes only in the form of shares  
4 of crops—and they would not be inclined to spend \$30 to \$40 on a gun that would  
5 represent perhaps 3 to 6 months wages. There was no necessity for them to do so:  
6 perfectly adequate guns for individual self-defense, even some “repeaters,” would  
7 have been in their price range.

8 101. The Fourteenth Amendment assured Black Americans that they could  
9 possess firearms for self-defense but did not assure them that they could possess  
10 any firearms they wanted, including high-capacity rifles. This same principle of the  
11 Amendment held equally true for whites.

12 102. Americans in the Reconstruction-era South understood perhaps better  
13 than anyone that Henrys and Winchesters were weapons for organized military use  
14 that did not belong in the general population. Except for a small number of  
15 insurrectionary militias, like the Ku Klux Klan, the enemies of the Republican state  
16 administrations in Louisiana and South Carolina that armed their state militias with  
17 high-capacity firearms did not respond by trying to obtain the same weapons for  
18 themselves. Rather, they responded by demanding the removal of the weapons and  
19 the organizations that carried them. When these opposition factions came into  
20 power in 1877, they disbanded the state militias and warehoused the Winchesters.  
21 To be sure, they maintained laws that allowed citizens to possess firearms for their  
22 individual self-defense, but they did not view high-capacity firearms as appropriate  
23 for such a purpose.

24 103. My examination of statutes and state-level court opinions from the  
25 Reconstruction-era South revealed that firearms were sometimes mentioned as  
26 weapons of individual self-defense, but in such instances, the types of firearms  
27  
28

1 mentioned were, with one exception, low-capacity firearms such as pistols,  
2 revolvers, muskets, and rifles.<sup>79</sup>

3 104. The one potential exception comes from a Tennessee state court  
4 opinion of 1871, *Andrews v. State*. The court in *Andrews* ruled that among the  
5 weapons a citizen might possess were rifles “of all descriptions,” including “the  
6 shot gun, the musket, and repeater.”<sup>80</sup> This opinion has been cited by at least one  
7 scholar as evidence that high-capacity firearms were understood to be possible  
8 weapons of individual self-defense.<sup>81</sup> Yet, a “repeater” at the time of the *Andrews*  
9 opinion (1871), and during the whole of Reconstruction, would have been  
10 understood to be a low-capacity repeating rifle, such as a Spencer or Sharps, neither  
11 of which could hold more than ten rounds. The parlance of the day put Henrys and  
12 Winchesters in a separate category from “repeaters.” Again and again during  
13 Reconstruction, from the Western Territories to the northern and southern states,  
14 when a cache of firearms was described, Henrys and Winchesters, though obviously  
15 repeating rifles, were always listed separately from “repeaters.” Furthermore, the  
16 firearms mentioned in Judge Thomas J. Freeman’s majority opinion in *Andrews*—  
17 shotguns, muskets, repeaters—were mentioned exclusively in terms of what a  
18 person might possess in his role as a member of the militia. The chief judge of the  
19 court, Alfred O. P. Nicholson, joined in that opinion. There was one judge on the  
20 court, though, who believed that the *Andrews* opinion should go further—that it  
21 should allow individuals to possess any weapon, regardless of what the militias in  
22 the state did or did not possess. That judge, Thomas A. R. Nelson, expressed his

23  
24 <sup>79</sup> The survey that I conducted was of all state statutes and state-level cases in  
25 the period 1863-1877 from the South relating to regulation of weapons. A list of  
26 state-level cases from all states appears at <https://guncite.com/court/state/> (accessed  
27 September 25, 2022).

28 <sup>80</sup> *Andrews v. State*, 50 Tenn. (3 Heisk.) 179 (1871).

<sup>81</sup> See, for example, Kopel, “The Second Amendment in the 19th Century,”  
B.Y.U. L. Rev. 1359, 1418-21 (1998).

(continued...)

1 view in a concurring opinion, which he alone signed. The opinion did not mention  
2 Henrys or Winchesters as weapons that he thought that any individual might  
3 possess.<sup>82</sup>

4 105. Even more revealing evidence for Reconstruction-era officials  
5 believing that high-capacity firearms should be regulated comes from Louisiana.  
6 Of the states that had militias that carried Henrys or Winchesters, Louisiana was the  
7 only one that left behind a readily accessible record of how these high-capacity  
8 firearms were to be managed by state authorities. All arms for the state militia were  
9 overseen by the state adjutant general, James Longstreet. A former Confederate  
10 General who joined the Louisiana Republican Party after the Civil War—a move  
11 that forever marked him as a turncoat by his former Confederate comrades—  
12 Longstreet well understood the ongoing insurrectionary intentions of former  
13 Confederates in his state and elsewhere. He thought it crucial to ensure that such  
14 men did not end up with Winchesters, and that they be incited as little as possible  
15 by the sight of Winchesters being carried in public by their organized enemies,  
16 Black-American militiamen foremost among them. For these reasons, he took  
17 extraordinary precautions concerning the Winchesters that were held in the New  
18 Orleans armory. His orders for the armory began with typical provisions such as  
19 putting guards around the building and making sure that all guns inside were racked  
20 when not in authorized use. Then, in the last provision of his orders, he turned  
21 specifically to Winchesters. They were not to “be taken to pieces, or any part of  
22 [them] removed . . . unless authorized by the Division Commander.” The  
23 Winchesters were also not to be used for “parade or drill upon the streets or public  
24 highways” without the Division Commander’s authority. Such restrictions were  
25 not put on the other weapons in the arsenal; they were only for the Winchesters.<sup>83</sup>

26 <sup>82</sup> *Andrews v. State*, 50 Tenn. (3 Heisk.) 193-200 (1871).

27 <sup>83</sup> Adjutant General James Longstreet, General Orders No. 16, New Orleans,  
28 July 19, 1870, in *Annual Report of the Adjutant General of the State of Louisiana*,  
for the Year Ending December 31, 1870 (New Orleans, A.L. Lee, 1871), p. 39.

1 **VI. CONCLUSION. RECONSTRUCTION AND TODAY: CONTINUITY AND**  
 2 **CHANGE**

3 106. How does the situation surrounding high-capacity firearms today  
 4 compare to the Reconstruction era? High-capacity firearms are still being sold  
 5 under the name Winchester, by companies such as Browning, but the Winchester  
 6 Repeating Rifle Company ceased to exist long ago. Of course, high-capacity  
 7 firearms can be found under plenty of other names today. But whereas today the  
 8 owners of such firearms might be civilians, in the Reconstruction era they would be  
 9 almost exclusively soldiers or law enforcement officers. There were civilians  
 10 during Reconstruction who owned high-capacity rifles, to be sure. Yet almost all  
 11 such civilians were “frontiersmen” of the Western Territories, and the population of  
 12 the Western Territories was tiny compared to the population of the United States as  
 13 a whole. Furthermore, Henrys and Winchesters, the only high-capacity firearms of  
 14 the era, were not the preferred firearms of the “frontiersmen” of the region.

15 107. By far the largest population possessing Henrys and Winchesters  
 16 during Reconstruction were members of state-wide militias. These organizations  
 17 no longer exist under their Reconstruction name of “state militias.” They evolved  
 18 into the National Guard, a term first used in place of “state militias” in the North in  
 19 the 1880s but ultimately applied to all state-level forces that were auxiliary to the  
 20 U.S. army, including those in the South. National Guard units today are not  
 21 analogues to the Reconstruction-era state militias; they are direct descendants.<sup>84</sup>  
 22 And they operate in exactly the same way. They are under the command of state  
 23 governors but can be used as auxiliary forces of the U.S. army—that is, they can be  
 24 “federalized.”<sup>85</sup> Membership in the National Guard, like membership in the

25 <sup>84</sup> Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the*  
 26 *Origins of Gun Control in America* (New York: Oxford University Press, 2006),  
 196-97.

27 <sup>85</sup> The statutory language that enabled Abraham Lincoln to call up state  
 28 militias in 1861, which was then invoked occasionally during Reconstruction to

(continued...)

1 Reconstruction-era state militias, is regulated. National Guard units, like  
2 Reconstruction-era state militias, are expected to have proficiency with the weapons  
3 they use and to have unfailing allegiance to the recognized governments of their  
4 state and nation. Their access to high-capacity firearms is regulated. Such weapons  
5 are typically kept under guard in a central location, such as an armory, and  
6 dispensed to their users only for purposes of drilling, training, or actual use on those  
7 occasions when National Guard units are called out. Beside today's National  
8 Guard, other users of high-capacity firearms at present include civilian law  
9 enforcement officers. As this declaration has shown, the analogs of such officials  
10 during the Reconstruction era—urban policemen, sheriffs, or U.S. marshals—also  
11 were known on occasion to carry high-capacity firearms.

12 108. What is distinctly different today compared to Reconstruction is the  
13 ownership of high-capacity firearms by Americans who have no connection to the  
14 military or law enforcement. If such owners along with their weapons were  
15 transported by a time machine back to the Reconstruction-era South, they would  
16 find themselves suspected of being outlaws by law enforcement officers. If they  
17 then gathered together into organized companies, they would be considered  
18 insurrectionary militias, which is precisely how the Ku Klux Klan was regarded  
19 during Reconstruction by the U.S. army, the state militias, and other legitimate,  
20 pro-Union law enforcement officials.

21  
22  
23 federalize state militias, now resides in the statute that enables the President to  
24 federalize the National Guard; see 10 U.S.C. 332 (Aug. 10, 1956, ch. 1041, 70A  
25 Stat. 15; Pub. L. 109–163, div. A, title X, §1057(a)(2), Jan. 6, 2006, 119 Stat.  
26 3440). One of the reasons for the rise in significance of the National Guard after  
27 Reconstruction was the federal “Posse Comitatus Act” of 1878, which prohibited  
28 the direct intervention of the U.S. army into states except in extraordinary  
circumstances. After that legislation, the National Guard units were needed not so  
much as auxiliaries to the U.S. army as substitutes for them. On the “Posse  
Comitatus Act” see Gautham Rao, “The Federal “Posse Comitatus” Doctrine:  
Slavery, Compulsion, and Statecraft in Mid-Nineteenth-Century America,” *Law  
and History Review*, 26 (Spring, 2008), 1-56.

1 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the  
2 laws of the United States of America that the foregoing is true and correct.

3 Executed on November 10, 2022, at Providence, Rhode Island.  
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8 Michael Vorenberg  
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## **EXHIBIT A**

## **CURRICULUM VITAE**

### **Michael Vorenberg**

Associate Professor of History  
Brown University

**Education**     Ph.D. in History, Harvard University, November 1995 (American History)  
                         A.M. in History, Harvard University, March 1990 (American History)  
                         A.B. in History, Harvard University, June 1986, *summa cum laude* (Ancient History)

### **Professional Appointments**

Associate Professor of History (with tenure), Brown University, 2004-  
Vartan Gregorian Assistant Professor, Brown University, 2002-2004  
Assistant Professor, History Department, Brown University, 1999-  
Assistant Professor, History Department, SUNY at Buffalo, 1996-99  
Post-Doctoral Fellow, W.E.B. Du Bois Center, Harvard University, 1995-96  
Lecturer, History and Literature Program, Harvard University, 1995-96

### **Scholarship**

#### **Books**

*Lincoln's Peace: The Elusive End of the American Civil War* (forthcoming  
with Alfred A. Knopf).  
*The Emancipation Proclamation: A Brief History with Documents* (Bedford/St.  
Martin's, 2010).  
*Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth  
Amendment*. Cambridge: Cambridge University Press, 2001.  
(Paperback edition, 2004.)

#### **Chapters in Books**

"The 1866 Civil Rights Act and the Beginning of Military Reconstruction," in Christian  
Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866  
from Reconstruction to Today* (Carbondale, Ill.: Southern Illinois University  
Press, 2018), 60-88.  
"The Thirteenth Amendment," in *1865: America Makes War and Peace in Lincoln's  
Final Year* (Carbondale, Ill.: Southern Illinois University Press, 2015), 7-21.  
"Liberté, égalité, and Lincoln: French Readings of an American President," in Richard  
Carwardine and Jay Sexton, eds., *The Global Lincoln* (New York: Oxford  
University Press, 2011), 95-106.  
"Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence," in  
Alexander Tsesis, ed., *The Promises of Liberty: The History and Contemporary  
Relevance of the Thirteenth Amendment* (New York: Columbia University Press,  
2010).

- “Did Emancipation Create American Citizens : Abraham Lincoln s View” (in Russian), in Victoria Zhuravleva, ed., *Abraham Lincoln: Lessons of History and the Contemporary World* (Moscow: Russian State University for the Humanities Press, 2010).
- “Abraham Lincoln s Fellow Citizens Before and After Emancipation,” in William A. Blair and Karen Fisher Younger, eds., *Lincoln s Proclamation: Emancipation Reconsidered* (Chapel Hill: University of North Carolina Press, 2009), 151-169.
- “The Thirteenth Amendment Enacted,” in Harold Holzer and Sara Vaughn Gabbard, eds., *Lincoln and Freedom: Slavery, Emancipation, and The Thirteenth Amendment* (Carbondale, Ill.: Southern Illinois University Press, 2007).
- “After Emancipation: Abraham Lincoln s Black Dream,” in John Y. Simon, Harold Holzer, and Dawn Vogel, eds., *Lincoln Revisited* (New York: Fordham University Press, 2007).
- “Slavery Reparations in Theory and Practice: Lincoln s Approach,” in Brian Dirck, ed., *Lincoln Emancipated: The President and the Politics of Race* (DeKalb: Northern Illinois Univ. Press, 2007).
- “Reconstruction as a Constitutional Crisis,” in Thomas J. Brown, ed., *Reconstructions: New Directions in the History of Postbellum America* (New York: Oxford University Press, 2006).
- “The World Will Forever Applaud: Emancipation,” in Aaron Sheehan-Dean, ed., *The Struggle for a Vast Future: The American Civil War* (Oxford, UK: Osprey, 2006).
- “Emancipating the Constitution: Francis Lieber and the Theory of Amendment,” in Charles R. Mack and Henry H. Lesesne, eds., *Francis Lieber and the Culture of the Mind* (Columbia: Univ. of South Carolina Press, 2005).
- “The Chase Court (1864-1873): Cautious Reconstruction,” in Christopher Tomlins, ed., *The United States Supreme Court: The Pursuit of Justice* (Boston: Houghton Mifflin, 2005).
- “Bringing the Constitution Back In: Amendment, Innovation, and Popular Democracy during the Civil War Era,” in Meg Jacobs, William Novak, and Julian Zelizer, eds., *The Democratic Experiment: The Promise of American Political History* (Princeton: Princeton University Press, 2003).
- “The King s Cure: Abraham Lincoln and the End of Slavery,” in Charles Hubbard, ed., *Lincoln Reshapes the Presidency* (Mercer, Penn.: Mercer Univ. Press, 2004).
- “Rutherford B. Hayes,” in Alan Brinkley and Davis Dyer, eds., *The Reader s Companion to the American Presidency*. Boston: Houghton Mifflin, 2000.
- “Abraham Lincoln and the Politics of Black Colonization,” in Thomas F. Schwartz, ed., *“For a Vast Future Also”: Essays from the Journal of the Abraham Lincoln Association*. New York: Fordham University Press, 1999. (Reprint of article listed below.)

### **Refereed Journal Articles**

- “Spielberg’s *Lincoln*: The Great Emancipator Returns,” *Journal of the Civil War Era*, 3 (December 2013), 549-72.
- “Imagining a Different Reconstruction Constitution,” *Civil War History*, 51 (December 2005), 416-26.
- “The Deformed Child: Slavery and the Election of 1864,” *Civil War History*, 47 (September 2001), 240-257.
- “Abraham Lincoln and the Politics of Black Colonization,” *Journal of the Abraham Lincoln Association*, 14 (Summer 1993): 23-46.

### **Non-Refereed Journal Articles**

- “Emancipation Then What,” *New York Times*, “Disunion” Blog, January 15, 2013, <http://opinionator.blogs.nytimes.com/2013/01/15/emancipation-then-what/> php true& type blogs& r 0
- “Hearts of Blackness: Reconsidering the Abolitionists Again,” *Reviews in American History*, 32 (March 2004), 33-40.
- “The Battle Over Gettysburg: What Lincoln Would Have Said about September 11, 2001,” *Brown Alumni Magazine*, 103 (Jan./Feb. 2003), 27.
- “Recovered Memory of the Civil War,” *Reviews in American History*, 29 (Dec. 2001), 550-58.

### **Invited Lectures**

- “A Righteous Peace: Abraham Lincoln, the Civil War, and the End of Slavery,” The Humanities Forum, Providence College, Oct. 18, 2019.
- “How Wars End--or Don’t: The Civil War as a Case Study,” Henry E. Huntington Society of Fellows Lecture, May 8, 2019.
- “Lincoln’s Peace: The Struggle to End the American Civil War,” Occidental College (Billington Lecture), Feb. 21, 2019.
- “The Fate of Slavery after Emancipation,” The Great Lectures Series (as OAH Distinguished Lecturer), New York City, October 14, 2017.
- “Abraham Lincoln, the Thirteenth Amendment, and the Struggle for American Peace and Freedom,” University of Saint Mary Annual Lincoln Lecture, Topeka, Kansas, February 20, 2017.
- “The 14th Amendment as an Act of War,” Boston College, Clough Center, Newton, Massachusetts, September 20, 2016.
- “Born in the USA So What?” Worcester Polytechnic Institute, Constitution Day University Speaker, Worcester, Massachusetts, September 19, 2016.
- “The Slave Power on the Gallows: The Deeper Meaning of the Execution of Henry Wirz, Confederate Commandant,” University of California, Berkeley, Legal History Workshop, March 29, 2016.
- Salmon P. Chase Symposium on the Thirteenth Amendment (participant), Georgetown Law Center, Dec. 4-5, 2015, Washington, DC.
- “The Last Surrender: Looking for the End of the Civil War,” presented at The Lincoln Forum, Gettysburg, Pennsylvania, November 17, 2015.

- “Voting Rights and the Meaning of Freedom: The View from the Civil War Era,” Annual Lincoln Legacy Lecture, University of Illinois at Springfield, October 15, 2015.
- “Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment,” Roger Williams University, October 6, 2015.
- “Lincoln and the Jews, Freedom and Discrimination,” Brown Hillel Alumni Association, New York City, May 17, 2015.
- “When Should History Say That Slavery Ended in the United States ,” Center for Slavery and Justice, Brown University, May 8th, 2015.
- “Lincoln, the Constitution, and the Civil War,” Community College of Rhode Island, April 29, 2015.
- “Judgment at Washington: Henry Wirz, Lew Wallace, and the End of the Civil War,” Annual Symposium of Capitol Historical Society, Washington, DC, May 2, 2014.
- “Emancipation, Lincoln, and the Thirteenth Amendment,” Dole Forum, Dole Institute of Politics, University of Kansas, Lawrence, Kansas, November 21, 2013.
- “Spielberg s Lincoln and the Relation between Film and History,” Department of History, Loyola University, Chicago, Illinois, November 13, 2013.
- “The Appomattox Effect: Struggling to Find the End of the American Civil War,” Newberry Library Colloquium, Chicago, Illinois, November 6, 2013.
- “Reconstruction and the Origins of Civil Rights,” National Endowment for the Humanities Summer Institute on Civil Rights History, Harvard University, Cambridge, Massachusetts, July 1, 2013.
- “The Origins and Process of Emancipation,” Emancipation at 150 Symposium, Boston College Clough Center, Newton, Massachusetts, April 23, 2013.
- “Emancipation Then What Citizenship ” Emancipation Proclamation Symposium, University of Michigan, October 26, 2012.
- “Blood, Allegiance, Belief: The Meanings of Citizenship in the Civil War Era,” University of Michigan Law School, January 31, 2012.
- “American by War: The People and Their Nations during the Civil War,” Phillips Andover Academy, Andover, MA, Nov. 17, 2011.
- “Birthright and the Myth of Liberal Citizenship,” JANUS Forum, Brown University, Nov. 15, 2011.
- “American by War: The People and Their Nations during the Civil War,” Western Kentucky University, Bowling Green, KY, Oct. 12, 2011.
- “The Elections of 1860 and 2010 and the Politics of Citizenship,” Colby College Symposium on the American Civil War Sesquicentennial, Waterville, Maine, November 10, 2010.
- “Americans Debate Citizenship Then and Now,” Brown Club of England, October 12, 2010, London.
- “War Powers, *Ex Parte Merryman*, and the Relevance of the American Civil War,” American Bar Association Workshop for High School Teachers, Washington, D.C., June 19, 2010
- “Originalism and the Meanings of Freedom,” Georgetown Law School, Washington, D.C., March 30, 2010.
- “Abraham Lincoln, Politician,” Rotary Club of Rhode Island, Warwick, R.I., November 6, 2008.

- “Lincoln the Citizen,” Abraham Lincoln Symposium, National Archives, Washington, D.C., September 20, 2008.
- “Emancipation and its Meaning in Current Scholarship,” National Endowment for the Humanities Summer Institute on “Slavery and Emancipation,” Philadelphia, Pennsylvania, July 28, 2008.
- “Lincoln the Citizen Or Lincoln the Anti-Citizen ,” Abraham Lincoln Symposium, Springfield, Illinois, February 12, 2008.
- “The Tangled History of Civil Rights and Citizenship in the Civil War Era,” University of Virginia School of Law, November 2007.
- “Civil Liberties and Civil Rights: The Civil War Era,” American Bar Association, Chicago, May 2006.
- “Race, the Supreme Court, and the Retreat from Reconstruction,” Boston College School of Law, April 2007.
- “Forever Free: The Meanings of Emancipation in Lincoln s Time and Ours,” St. Louis University, December 7, 2006.
- “Slavery Reparations in Historical Context,” Connecticut College, New London, Connecticut, March 2, 2006.
- “Abraham Lincoln, The Civil War and the Conflicting Legacies of Emancipation,” presented as part of the “Forever Free” series, Providence Public Library, Providence, R.I., January 26, 2006.
- “Abraham Lincoln, War Powers, and the Impact of the Civil War on the U.S. Constitution,” presented at symposium on “War Powers and the Constitution,” Dickinson College, Dickinson, Penn., October 3, 2005.
- “Reconsidering Law, the Constitution, and Citizenship,” presented at “New Directions in Reconstruction” symposium, Beaufort, S.C., April 15-18, 2004.
- “Abraham Lincoln, Slavery, and Modern Legacies,” Public History Series, University of Las Vegas, Nevada, February 12, 2004.
- “Oaths, African Americans, and Citizenship,” University of Nevada at Las Vegas Law School, February 12, 2004.
- “Reconsidering the Era of the Oath: African Americans Before Union Military Courts during the American Civil War,” presented to the Law and History symposium, Northwestern University Law School, Chicago, Ill., November 3, 2003.
- “Racial and Written Constitutions in Nineteenth-Century America,” presented to the workshop of the Department of History, Boston College, Newton, Massachusetts, March 2003.
- “Abraham Lincoln, Abolition, and the Impact of the Civil War on the Cult of the Constitution,” presented at the Social Law Library, Suffolk University, Boston, Massachusetts, February 2002.
- “Francis Lieber, Constitutional Amendments, and the Problem of Citizenship,” presented at The Francis Lieber Symposium, University of South Carolina, Columbia, S.C., November 2001.
- “How Black Freedom Changed the Constitution,” presented at the “Writing the Civil War” symposium, Atlanta History Center, Atlanta, Georgia, September 2001.

- “From a Covenant with Death to a Covenant with Life: The Constitution s Transformation during the American Civil War,” presented as the Annual Constitutional Anniversary Lecture, National Archives, Washington, D.C., September 2001.
- “New Perspectives on Abraham Lincoln, Emancipation, and the Civil War,” presented to the Civil War Round Table of Rhode Island, Cranston, Rhode Island, June 2001.
- “Historical Roots of the Modern Civil Rights Movement: The Constitution,” presented at the Civil Rights Summer Institute, Harvard University, Cambridge, Massachusetts, June 2001.
- “Race, Law, and the Invention of the State Action Doctrine in the Late Nineteenth Century,” presented at the Columbia University Law School, New York City, April 2001.
- “A King s Cure, a King s Style: Lincoln, Leadership, and the Thirteenth Amendment,” presented at the “Abraham Lincoln and the Legacy of the Presidency” conference, Lincoln Memorial University, Harrogate, Tennessee, April 2001.
- “The Tangled Tale of Civil War Emancipation,” presented at the University of Richmond, Richmond, Virginia, March 2001.
- “The King s Cure: Abraham Lincoln, the Thirteenth Amendment, and the Fate of Slavery,” presented at the Abraham Lincoln Institute of the Mid-Atlantic, Washington, D.C., March 2001.
- “Race, the Supreme Court, and the Retreat from Reconstruction,” presented at the Boston College School of Law, Newton, Mass., April 2000.

#### **Papers Read or Discussed**

- “Prisoners of Freedom, Prisoners of War: An Untold Story of Black Incarceration--And How it Might be Told,” Brown Legal History Workshop, Oct. 28, 2019.
- “Bearer of a Cup of Mercy: Lew Wallace s American Empire,” Henry E. Huntington Library, Research Fellows Meeting, Feb. 6, 2019.
- “Anti-Imperialism and the Elusive End of the American Civil War,” presented at the “Remaking North American Sovereignty” Conference, Banff, Alberta, Canada, July 31, 2015.
- “The Election of 1864: Emancipation Promised, Emancipation Deferred,” presented at The Annual Meeting of the Organization of American Historians, Atlanta, Georgia, April 11, 2014.
- “The Appomattox Effect: Struggling to Find the End of the American Civil War,” Department of History, Northwestern University, Evanston, Ill., Nov. 15, 2013.
- “Birth, Blood, and Belief: Allegiance and the American Civil War,” presented at the Elizabeth Clark Legal History Workshop Series, Boston University School of Law, Nov. 16, 2011.
- “French Readings of Lincoln s Role in the Creation of American Citizenship,” presented at the conference on European Readings of Abraham Lincoln, His Times and Legacy, American University of Paris, Paris, France, October 18, 2009.

Michael Vorenberg c.v., page 6



- “Was Lincoln’s Constitution Color-Blind,” presented at the Abraham Lincoln Bicentennial Symposium, Harvard University, Cambridge, Mass., April 24, 2009.
- “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” presented at conference on Slavery, Abolition, and Human Rights: Interdisciplinary Perspectives on the Thirteenth Amendment, April 17, 2009
- “Did Emancipation Create American Citizens – Abraham Lincoln’s View,” presented at the conference on Abraham Lincoln: Issues of Democracy and Unity, Russian State University, Moscow, Feb. 8, 2009.
- “The Racial and Written Constitutions of Nineteenth-Century America,” Cogut Center for the Humanities, Brown University, Nov. 4, 2008.
- “Civil War Era State-Building: The Human Cost,” Boston University Political History Workshop, March 19, 2008.
- “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” annual meeting of the *Law and Society Association*, Montreal, May 30, 2008.
- “Claiming Citizenship: Black and White Southerners Make Their Cases During the Civil War,” presented at the annual meeting of the *Southern Historical Association*, Memphis, November 2004.
- “Imagining a Different Reconstruction Constitution,” presented at the annual meeting of the Social Science History Association, Baltimore, November 2003.
- “West of Reconstruction: Resolving Mexican-American Property and Citizenship in the Civil War Era,” presented at the annual meeting of the *American Historical Association*, San Francisco, California, January 2002.
- “The Limits of Free Soil: The Resolution of Mexican Land Claims during the American Civil War,” presented at the annual meeting of the *Organization of American Historians*, St. Louis, Missouri, April 2000.
- “Written Constitutions, Racial Constitutions, and Constitutional Permanence in Nineteenth-Century America,” presented at the annual meeting of the *American Society for Legal History*, Toronto, Ontario, October 1999.
- “Law, Politics, and the Making of California Free Soil during the American Civil War,” presented at the annual meeting of the *Western History Association*, Portland, Oregon, October 1999.
- “Land Law in the Era of Free Soil: The Case of New Almaden,” *American Society for Environmental History*, Tucson, Arizona, April 1999.
- “Written Constitutions, Racial Constitutions, and Constitutional Permanence in Antebellum America,” presented at the annual meeting of the *Society for Historians of the Early American Republic*, Harpers Ferry, W.V., July 1998.
- “The Constitution in African-American Culture: Freedom Celebrations and the Thirteenth Amendment,” presented to the *W.E.B. Du Bois Institute*, Harvard University, Cambridge, Massachusetts, April 1996.
- “Civil War Emancipation and the Sources of Constitutional Freedom,” presented at the annual meeting of the *Organization of American Historians*, Washington, D.C., April 1995.

“The Origins and Original Meanings of the Thirteenth Amendment,” presented at the annual meeting of the *American Society for Legal History*, Washington, D.C., October 1994.

“Civil War Emancipation in Theory and Practice: Debates on Slavery and Race in the Border States, 1862-1865,” presented at the *Southern Labor Studies Conference*, Birmingham, Alabama, October 1993.

## **Service**

### **University**

Anna S. K. Brown Library advisory committee, member, 2016-present.

Co-Organizer (with Faiz Ahmed, Rebecca Nedostup, Emily Owens), Brown Legal History Workshop, 2015-present.

Political Theory Project, Advisory Board, 2010-2019

Organizer and Presenter, “Abraham Lincoln for the 21<sup>st</sup> Century: A Symposium honoring the Abraham Lincoln Bicentennial,” John Hay Library, Brown University, Feb. 27-28, 2009. Plenary lecture by Benjamin Jealous, president of NAACP, and six symposium participants. Funding secured from Rhode Island Foundation, Rhode Island Lincoln Bicentennial Commission, Brown Provost, Brown Dean of Faculty, History Department, Africana Studies Department

### **Profession**

Program Committee, Society of Civil War Historians, 2022 annual conference, 2020-present.

Cromwell Prize Committee, American Society for Legal Historians, 2014-2017.

Board of Editors, *Law and History Review*, 2004-2013 (reappointed 2009).

Advisory Committee, United States Abraham Lincoln Bicentennial Commission, 2002-10.

Board of Advisors, Lincoln Prize, Gettysburg Institute (2000-present).

Co-Chair, Local Arrangements Committee, Annual Meeting of the Society for Historians of the Early American Republic, Providence, Rhode Island, Summer 2004.

Referee for National Endowment for the Humanities  
Scholarly Editions, 2002; Summer Grants, 2001-2003.

Committee Member, Local Arrangements Committee, Annual Meeting of the American Society for Environmental History, to be held in Providence, Rhode Island, Spring 2003.

Referee for article manuscripts submitted to the *Journal of American History*, *Law and History Review*, *Law and Social Inquiry*, *Journal of the Civil War Era*, and *Civil War History*.

Referee for book manuscripts submitted to Houghton Mifflin, Harvard University Press, Oxford University Press, New York University Press, University of Chicago Press, University of Illinois Press, and University of North Carolina Press.

Advisory Editor for *Proteus* (special issue devoted to the American Civil War, Fall 2000).

### **Community**

Lecture on American Citizenship and Exclusion, Center for Reconciliation, Providence, R.I., July 2018.

Instructor in co-taught course at the Rhode Island Adult Correctional Institute (ACI) through the Brown University BELLS program, 2013.

Lecture on Reconstruction-Era Constitutional Amendments, Barrington, RI, Open Classroom, April 4, 2013.

Lecture on 150<sup>th</sup> Anniversary of the Emancipation Proclamation, Wheeler School, Providence, Rhode Island, January 17, 2013.

Rhode Island Civil War Sesquicentennial Commission, 2011- .

Rhode Island Abraham Lincoln Bicentennial Commission (appointed by Governor), 2005-2009.

Lecturer on the Brown Steering Committee on Slavery and Justice, The Wheeler School, Providence, Rhode Island, November 2006.

Seminar leader for National Endowment for the Humanities “We the People” initiative at Deerfield Historical Society, Deerfield, Mass., April 2006.

Seminar leader for National Endowment for the Humanities “Teaching American History” initiative at Rhode Island Historical Society, Providence, R.I., September 2005.

Seminar leader for National Endowment for the Humanities “We the People” initiative at Deerfield Historical Society, Deerfield, Mass., March 2005.

Advisor to the Burrillville, Rhode Island, School Department, on securing and administering a “Teaching American History” grant from the United States Department of Education, 2001-2002.

### **Academic Honors and Fellowships**

Ray Allen Billington Professor, Occidental College/Henry E. Huntington Library, 2018-19.

Pembroke Center for the Study of Women and Gender Fellowship, Brown University, 2016-17.

National Endowment for the Humanities Long-Term Fellowship, Massachusetts Historical Society, Boston, Massachusetts, 2014.

National Endowment for the Humanities Long-Term Fellowship, Newberry Library, Chicago, Illinois, 2013.

Finalist, CIES Fulbright Fellowship for University of Rome III (2010-11 competition)

Cogut Center for the Humanities Fellowship, Brown University, Fall 2008.

William McLoughlin Prize for Teaching in the Social Sciences, Brown University, 2007.

Karen Romer Prize for Undergraduate Advising, Brown University, 2007.

History News Network (HNN) “Top Young Historian,” 2005 (1 of 12 named in the U.S.).

Vartan Gregorian Assistant Professorship, Brown University, 2002-2004.

Finalist, Lincoln Prize, 2002 (for *Final Freedom*).

American Council of Learned Societies/Andrew W. Mellon Fellowship, 2002-03.

Kate B. and Hall J. Peterson Fellowship, American Antiquarian Society, 2002-03.

Salomon Research Award, Brown University, 2002-2003.

National Endowment for the Humanities Summer Stipend, 2001.

Julian Park Fund Fellowship, SUNY at Buffalo, 1998.

Research Development Fund Fellowship, SUNY at Buffalo, 1997.  
Harold K. Gross Prize for Best Dissertation at Harvard in History, 1996.  
Delancey Jay Prize for Best Dissertation at Harvard on Human Liberties, 1996.  
W.E.B. Du Bois Fellowship, Harvard University, 1995.  
Whiting Fellowship in the Humanities, 1994.  
Bowdoin Prize for Best Essay at Harvard in the Humanities, 1993.  
Indiana Historical Society Graduate Fellowship, 1993.  
W. M. Keck Fellowship, Henry E. Huntington Library, 1993.  
Everett M. Dirksen Congressional Research Fellowship, 1993.  
Mark DeWolfe Howe Fellowship, Harvard Law School, 1993.  
Charles Warren Center Research Fellowship, Harvard History Dept., 1991-2.  
Derek Bok Award for Distinction in Teaching at Harvard, 1991.  
Philip Washburn Prize for Best Senior Thesis at Harvard in History, 1986.

## **EXHIBIT 15**

**CERTIFIED COPY**

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE  
ROGER T. BENITEZ, DISTRICT JUDGE PRESIDING

---

VIRGINIA DUNCAN, et al.,                     ) Case No: 3:17-cv-01017-BEN-JLB  
   )  
Plaintiffs,                                     ) Motion Hearings  
   ) Department 5A  
   )  
   ) Date: 12/12/2022  
   )  
ROB BONTA, in his official                     )  
capacity as attorney general                     )  
of the State of California                     )  
   )  
Defendants.                                     )  
   )

---

KIM RHODE, et al.,                     ) Case No: 3:18-cv-00802-BEN-JLB  
   )  
Plaintiffs,                                     )  
   )  
v.   )  
   )  
ROB BONTA, in his official                     )  
capacity as attorney general                     )  
of the State of California,                     )  
   )  
Defendants.                                     )  
   )

---

JAMES MILLER, et al.,                     ) Case No: 3:19-cv-01537-BEN-JLB  
   )  
Plaintiffs,                                     )  
   )  
v.   )  
   )  
CALIFORNIA ATTORNEY GENERAL                     )  
ROB BONTA, et al.,                     )  
   )  
Defendants.                                     )  
   )

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--- caption continued on the following page ---

1  
2 RUSSELL FOUTS, et al., ) Case No: 3:19-cv-01662-BEN-JBL  
3 Plaintiffs, )  
4 v. )  
5 ROB BONTA, in his official )  
6 capacity as attorney general )  
7 of the State of California. )  
Defendants. )

8  
9 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

10 Pages 1 through 51  
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21 **--- appearances continued on the following page ---**

22  
23 REPORTED BY: Abigail R. Torres, CSR, RPR/RMR, FCRR  
24 CSR No. 13700  
25 United States District Court  
Southern District of California  
333 West Broadway, Suite 420  
San Diego, California 92101



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By: SEAN A. BRADY, ESQ.  
5 By: KONSTADINOS T. MOROS, ESQ.

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24  
25 --- appearances continued on the following page ---

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24

25

SAN DIEGO, CALIFORNIA; MONDAY, DECEMBER 12, 2022; 10:38 A.M.

-oOo-

THE COURT: Good morning.

THE CLERK: Calling 1, 2, 3, and 4 on calendar.

One, 17-cv-1017, *Duncan, et al., v. Becerra, et al.*

Two, 18-cv-0802, *Rhode, et al., v. Becerra, et al.*

Three, 19-cv-1537, *Miller, et al., v. Becerra, et al.*

Four, 19-cv-1662, *Fouts, et al., v. Becerra, et al.*

All set for status conference.

THE COURT: All right, Counsel. Thank you for being here this morning. Let's start with the Plaintiff.

If you would please identify yourself. Please speak slowly, clearly, so that my court reporter can take down your names and so that I can, hopefully, do justice to them. Okay?

MS. BARVIR: Thank you, Your Honor.

Anna Barvir, B-a-r-v-i-r, for Plaintiff Virginia Duncan, et al.

THE COURT: All right.

MR. BRADY: Good morning, Your Honor.

Sean Brady, S-e-a-n, B-r-a-d-y, on behalf of the Plaintiffs.

MR. MOROS: Good morning, Your Honor.

Konstadinos Moros on behalf of the Plaintiffs. That's K-o-n-s-t-a-d-i-n-o-s. And last name is Moros, M-o-r-o-s.

THE COURT: Okay. And for the State?

1 MR. O'BRIEN: Good morning, Your Honor.

2 Deputy Attorney General Anthony O'Brien,  
3 A-n-t-h-o-n-y; O, apostrophe, B-r-i-e-n, on behalf of the  
4 Attorney General and the Fouts and Rhode matter.

5 THE COURT: Okay.

6 MR. KELLY: Your Honor, excuse me. I'm also  
7 appearing -- I'm appearing on behalf of the State and the  
8 Attorney General in the Duncan and Miller matters.

9 My name is Kevin Kelly. K-e-v-i-n. Kelly, K-e-l-l-y.  
10 Deputy Attorney General. Thank you.

11 THE COURT: I'm sorry. You're on Duncan and Miller?

12 MR. KELLY: Correct, Your Honor.

13 THE COURT: Okay. Boy, I hope I can keep all this  
14 straight. Okay.

15 MR. BECKINGTON: Good morning, Your Honor.

16 Mark Beckington, B-e-c-k-i-n-g-t-o-n. I'm joining  
17 Mr. O'Brien and Mr. Kelly on all four cases.

18 THE COURT: I'm sorry?

19 MR. BECKINGTON: I'm joining Mr. Kelly and Mr. O'Brien  
20 on all four of the cases.

21 THE COURT: On all four. I remember you from the  
22 Miller case.

23 MR. BECKINGTON: Yes, Your Honor.

24 THE COURT: Yeah. Okay. Great.

25 All right. All right. Let's see Plaintiff in the

1 Rhode case.

2 MR. BRADY: Your Honor, Sean Brady on behalf of the  
3 Plaintiffs on Rhode.

4 MS. BARVIR: Anna Barvir on behalf of the Plaintiffs  
5 and Rhode as well.

6 THE COURT: All right. And on the Fouts matter?

7 MR. STAMBOULIEH: Steven Stamboulieh,  
8 S-t-a-m-b-o-u-l-i-e-h, for Plaintiff Fouts.

9 THE COURT: I'm sorry. Just a second.

10 Can you repeat your last name again for me, please?

11 MR. STAMBOULIEH: Stamboulieh, S-t-a-m-b-o-u-l-i-e-h.

12 MR. BECK: Alan Beck on behalf of the Plaintiffs.

13 A-l-a-n. Last name B-e-c-k, sir.

14 THE COURT: Okay. Have I missed anyone?

15 MR. DILLON: Your Honor, this is John Dillon appearing  
16 on behalf of the Plaintiffs for the Millers and --

17 THE COURT: I'm sorry. For Miller?

18 MR. DILLON: Yes.

19 THE COURT: And?

20 MR. DILLON: John Dillon.

21 THE COURT: Just on the Miller case?

22 MR. DILLON: Yeah, just for Miller.

23 THE COURT: All right. Have I missed anyone?

24 Okay. Well, thank you so much for being here this  
25 morning. The reason why I called the status conference -- and

1 I called all these cases at the same time -- is because, you  
2 know, a great deal of my life over the last few years has been  
3 devoted to dealing with these Second Amendment cases.

4 As you probably know, I have four of these cases and  
5 recently inherited the fee-shifting case from two other judges.  
6 And I've spent an awful lot of time, an awful lot of time, and  
7 read an awful lot of material and heard testimony on some of  
8 these -- at least one of these cases, anyway.

9 And so I thought that, given the fact that these cases  
10 have been returned to me following the Bruen opinion, that I  
11 didn't want to duplicate effort. First of all, my time, as I'm  
12 sure your time, my law clerk's time is valuable.

13 And so I thought that perhaps there was some way that  
14 we could approach a joint methodology for dealing with all of  
15 these cases, essentially, at one time and in one -- in one way.  
16 So my understanding of -- of Heller, is that Heller has not  
17 changed. It has not been overruled. It is still good law.

18 Bruen, the Bruen opinion, I believe, discarded the  
19 intermediate scrutiny test that I also thought was not very  
20 useful; and has, instead, replaced it with a text history and  
21 tradition test. Now, the text history and tradition issue is  
22 pretty much common, I think, to all of these cases.

23 There may be some nuance as to whether, for example,  
24 in some case the -- the history and tradition may effect  
25 ammunition. In another case, it may effect the type of weapon,

1 for example, whether it's a rifle or a dirk or a dagger. But  
2 in the end, it's the same. We're basically looking at the same  
3 body of history and tradition that we're going to be looking at  
4 in all of the cases.

5 So I have an idea of how this case ought to go  
6 forward, and I'll tell you what I would like to have -- by the  
7 way, I might add, I'm not sure, Mr. O'Brien, whether you filed  
8 the supplemental brief in the Fouts case. I'm not sure who  
9 filed that.

10 MR. O'BRIEN: Yes, Your Honor, I did.

11 THE COURT: All right. Well, let me compliment you on  
12 that, because one of the things that I thought you did that I  
13 really appreciated was you filed several declarations. One of  
14 those declarations did a historical analysis of several rules,  
15 laws, regulations, and so on and so forth, all of which I have  
16 read, I might add. So --

17 You can sit down.

18 -- I found that to be very, very helpful.

19 But I would like to ask you folks to do something a  
20 little bit different; very similar. But I don't have the  
21 staff. I don't have, really, the resources to do this, at  
22 least not to do it in a timely fashion.

23 So I thought that I would ask you to do something for  
24 me, which is to, essentially, do a similar survey as,  
25 Mr. O'Brien, you did in the -- in the Fouts case.



1           And I would like that survey, if you would. I mean,  
2 I'm sure you all have access to Excel spreadsheets and so on.  
3 But I'd like to see a survey that does the following for me:  
4 First of all, on a chronological bases, starting with date, the  
5 date of any law, regulation, ordinance, restriction. And I'm  
6 going to refer to those from now on as "restrictions." Okay.  
7 Generically, okay, restriction or regulation. Okay.

8           So if you could start out chronologically, if you  
9 would give me the date, and then if you would tell me what was  
10 it that was restricted. So, for example, in many of those  
11 regulations, they regulate dirks, daggers, metal knuckles. In  
12 some cases, it might be storage of gunpowder or cartridges.  
13 Some of them, some of these, are "use" regulations. In other  
14 words, you cannot use these while committing a crime. You  
15 cannot use them while breaking and entering into somebody's  
16 property. You cannot display them in anger.

17           So what is it exactly that the law or the regulation  
18 restricted? What type of weapon? What was the weapon that was  
19 being restricted? Was it a knife? a Bowie knife? a stiletto?  
20 metal knuckles? pistols? rifles? Then I would like to know  
21 whether or not that statute was repealed and, if it was  
22 repealed, what was repealed by, and was it replaced by  
23 something else? And if so, if you would do the same analysis?  
24 Again, continuing a chronological order. Right?

25           And then, finally, whether or not that regulation or

1 restriction was reviewed by court or courts? And if so, what  
2 was the -- what was the outcome? For example, was it found to  
3 be unconstitutional, or was it found to be constitutional? And  
4 if you'll give me a citation so that I can then go and look at  
5 the cases and see what the cases say.

6 I think -- so to pose an example, I think there are  
7 one or two regulations that I have found that restricted --  
8 specifically restricted billies. Okay. So in the Fouts case, I  
9 think that would be particularly relevant. I think I found one  
10 or two that restricted rifles and shotguns. I think I found  
11 one or two that restrict certain ammunition, cartridges.  
12 Right. I think I found one that restricts a weapon that can  
13 fire more than 16 or 18 rounds. And I found one that dealt  
14 with machine guns and automatic rifles.

15 You see, that's the sort of thing that I've read  
16 through that I've captured, but I can't really capture it in a  
17 way that I think that the Supreme Court would like us to do it,  
18 which is a chronological order, so that we can determine what  
19 regulations, what tradition exists with regards to restrictions  
20 at the adoption of the Second Amendment; and then I think,  
21 secondarily, at the time that the Fourteenth Amendment was  
22 adopted.

23 I think with that body of information, I think this  
24 Court would be in a much better position to make a decision as  
25 to what to do in each one of these cases.

1           So the cases have been sent back to me, given the  
2 Bruen opinion, and I'm now going to attempt to deal with them,  
3 but I don't want to have to deal and read the same stuff over  
4 and over and over again, because I've already read some of it  
5 twice. And, frankly, there's a lot of material there. I don't  
6 know how many boxes of five-inch binders I have, but it's a  
7 lot, and I have only so much time.

8           So I would suggest both sides, if you can, please do  
9 that for me. Okay. And I think that would be very helpful.

10           Now, as far as actually setting a hearing to -- to  
11 hear your arguments on these, I don't think there's any use in  
12 taking any evidence, meaning testimony, from anyone in any of  
13 these cases.

14           I mean, the history and tradition is what it is. I  
15 don't need, you know, Mr. Spitzer or Mr. Cornell to tell me  
16 what his view of the history and tradition is. I see no point  
17 in that; nor do I think any additional discovery is necessary  
18 or additional expert work is necessary. So, anyway, that's  
19 my -- that's my initial thought on this case.

20           If anyone has any suggestions on how we can go about  
21 proceeding with these cases, I would love to hear your views.  
22 I may not adopt your suggestion, but I'll certainly consider  
23 it. So if -- if anybody wants to address what I have said, or  
24 anything else on how we proceed with these cases, please feel  
25 free to speak up.

1           Maybe we'll start with Duncan, since it was the first  
2 case that I dealt with.

3           So do you have anything you want to add?

4           MS. BARVIR: Should I move here?

5           THE COURT: Yeah. Whatever. If you feel comfortable  
6 there at the table, that's fine.

7           MS. BARVIR: Again, Anna Barvir for Plaintiff Virginia  
8 Duncan.

9           Thank you, Your Honor, for your thoughtful  
10 consideration of all four matters. I'm sorry. I'm -- we've  
11 heard what -- that Your Honor is asking for from each party. I  
12 think that makes a lot of sense, though I do want to, I think,  
13 perhaps, focus the Court a little bit on what Plaintiffs' view  
14 as the kind of proper way of reviewing this case. And in our  
15 position, it doesn't really rely on -- it actually shouldn't  
16 rely, and it might be improper to rely on the sorts of -- even  
17 the laws that Your Honor is referencing in this survey and/or  
18 spreadsheet that we were talking about just now.

19           It is our position that Heller already tells -- Your  
20 Honor, tells all of us how to analyze this. The -- this is an  
21 arms banned possession case. So the Heller court then, backed  
22 up by the decision in Bruen, already handled that entire  
23 analysis. The analysis starts with --

24           THE COURT: But if that were so, why would the Ninth  
25 Circuit have kicked it back to me? I mean, I agree with you in

1 concept, but, you know, the Ninth Circuit kicked it back to me,  
2 so...

3 MS. BARVIR: Excuse me. I think that's a good  
4 question, and perhaps that's why Your Honor is, I think,  
5 intelligent, smart to ask the parties to do what we're doing.  
6 But I think that -- excuse me -- the Ninth Circuit also has a  
7 lot of these -- had a lot of these cases before it. And,  
8 obviously, all of the pro Second Amendment cases had gone up to  
9 en banc, and perhaps the Court wasn't willing to handle those  
10 at that point.

11 I'm not trying to cast aspersions, but I think we can  
12 all kind of agree that we've seen a lot of decisions that are  
13 not upholding lower-court decisions that strike California  
14 state laws, gun control laws, just overturned.

15 So perhaps they'd like to see that Your Honor do some  
16 more work on this case, but I don't think it requires --

17 THE COURT: Would you like some water?

18 MS. BARVIR: Yes.

19 I don't think that that requires us to do a new  
20 analysis of all the history that's out there. The Heller court  
21 was very -- had done a very detailed deep dive into all of the  
22 historical laws that are banning possession of arms and other  
23 types of gun control laws since the Founding and before.

24 And it found that the test is if it's -- excuse me --  
25 that the only time the State can lawfully ban a firearm or

1 other type of arm that is protected by the Second Amendment is  
2 if it's dangerous and unusual. The flip side being, typically  
3 possessed by law-abiding citizens for lawful purposes or  
4 other -- we've also heard it called the "common use" test. And  
5 so that test came out of the Court's analysis of the history  
6 and tradition.

7           So if the Court -- so the question that really is  
8 posed -- that Duncan poses this Court today, is whether or not  
9 magazines, and maybe more specifically magazines capable of  
10 holding more than ten rounds, are protected arms, bearable  
11 arms, under the Second Amendment's text.

12           And then, secondly, if there -- excuse me --  
13 otherwise, if there's a longstanding tradition, meaning are  
14 they dangerous and unusual. And this Court has already found  
15 that -- I mean, we have a really large record showing that  
16 they're not dangerous and unusual. And several courts have  
17 agreed with that finding both in the Ninth Circuit and other  
18 circuits have found it or they have been willing to accept it.  
19 And I don't think that Heller or -- I mean, I'm sorry -- I do  
20 not think Bruen changed that outcome.

21           So that's what we would like Your Honor to consider  
22 and to look at and perhaps think about when we are doing this  
23 search for more historical restrictions.

24           THE COURT: Let me ask you a question that I think has  
25 troubled me somewhat. So I think facts matter. And in

1 certain -- and in cases -- every case, there are parties that  
2 have greater access to evidence than others. Right. And at  
3 least in California, we have a presumption, for example, that  
4 when a party has the largest body of evidence but fails to  
5 present it, there's a presumption that if the evidence were to  
6 be considered by the Court, that the presumption would be that  
7 the party who has a greater body of evidence, that it would be  
8 held against him.

9 Now, one of the things that I'm concerned about, for  
10 example, is I just read someone said, "There's no evidence that  
11 a homeowner has ever fired more than ten rounds in defense."  
12 And I kind of think that that's -- I mean, I think probably the  
13 best evidence of that would be the State. The State would have  
14 the investigative reports, police reports, and so on, to  
15 explain that.

16 But I wonder if you agree with that statement, that  
17 there are no cases where a homeowner or a business owner has  
18 ever fired more than ten rounds in defense. And if so, and if  
19 that's the case, have you provided the Court with any  
20 information to support that?

21 MS. BARVIR: I don't -- I don't, standing here, know  
22 that that's true. I think that part of that is -- it's a kind  
23 of a false thing to do when you're limited to that number,  
24 anyway, but also --

25 THE COURT: I understand you. I understand -- I hear



1 you. I hear you. But I -- particularly in the Miller case, I  
2 took issue with Ms. Alan's -- Ms. Alan's analysis. And then I  
3 think I read something recently -- I can't recall which court  
4 it was -- but somebody said, "Oh, there's no evidence that a  
5 homeowner has fired more than ten rounds."

6 And defense -- and of course all that anyone has to do  
7 is go on the Internet and do a cursory search and find out that  
8 that's not true.

9 MS. BARVIR: Right.

10 THE COURT: And I wonder if you've done that.

11 MS. BARVIR: I think when we were here on MSJ -- and  
12 that's why we had this conversation several years ago.

13 THE COURT: You know, I'm sorry. But as I said, I  
14 have four of these, and if I get you all confused with one  
15 another, please forgive me. You know, I'm not as young as I  
16 used to be, so...

17 MS. BARVIR: None of us are.

18 When we were here on MSJ, I think we had this  
19 conversation as well. And a lot of times that was coming  
20 from -- you know, from Plaintiffs' side was coming from, I  
21 guess you could say, anecdotal news stories. Because we don't  
22 -- we aren't the State. We don't have access to those same  
23 sorts of records.

24 I don't think that it's true that that's never  
25 happened. That there's no evidence that it's ever happened.

1 But, again, even if it never happened, which I find  
2 extraordinarily hard to believe -- the police do it all the  
3 time -- it's not a relevant matter because the test --

4 THE COURT: Yeah, I know.

5 MS. BARVIR: -- for common use is typically  
6 possession.

7 THE COURT: I heard you. I know that. But I was just  
8 wondering if you agreed with that statement that there's no  
9 evidence that the homeowner has ever fired more than ten  
10 rounds, and just wanted to pick your brain on that.

11 Okay. I distracted you.

12 MS. BARVIR: That's okay. I have nothing more to add.

13 THE COURT: Okay. Great.

14 MS. BARVIR: So thank you for your time.

15 THE COURT: Sometimes -- sometimes less is more.

16 Okay.

17 Anyone else? No one else? Gee, I'm so glad.

18 MR. KELLY: Your Honor, could I be heard?

19 THE COURT: No. Sorry. I've heard all I need to  
20 hear.

21 No. Go ahead.

22 MR. KELLY: So the State would like to renew its  
23 request for an addition discovery period, not a lengthy  
24 discovery period in this action. Just a three-month is all we  
25 would ask for.

1 THE COURT: Tell me why.

2 MR. KELLY: Sorry, Your Honor?

3 THE COURT: Tell me why.

4 MR. KELLY: There's two reasons: First of all, this  
5 is a brand-new area of law, and it's a brand new area of  
6 historical analysis. And a three-month period would give our  
7 experts more time to actually look into this. I think we  
8 submitted a declaration from Professor Schrag, who details the  
9 types of work that is required of historians when they approach  
10 an issue like this.

11 And, also, Professor Cornell in his declaration also  
12 said that, "This work is still ongoing, and we did our level  
13 best" --

14 THE COURT: What happens in three months when the work  
15 stops? What's the -- what's the miracle? Was the miracle  
16 pertinent? Drops down in three months and work stops?

17 MR. KELLY: Well, Your Honor, obviously, I can't  
18 represent that new evidence will be found, but that's also  
19 because I don't know what I don't know, at this point, and  
20 neither do our experts.

21 So we would, again, renew our request for an  
22 additional discovery period followed by supplemental briefing.

23 And -- excuse me -- I had another point to make on  
24 that.

25 THE COURT: Okay. Go ahead.

1           MR. KELLY: So we would also want an opportunity for  
2 our experts to examine the evidence, the new evidence that the  
3 plaintiffs included in their response to our supplemental  
4 briefing. And that would also give our experts a chance to do  
5 so, and then --

6           THE COURT: So give me an example.

7           MR. KELLY: So I will give -- one moment, Your Honor.

8           So the Plaintiffs brought or included a declaration  
9 from Ashley Hlebinsky, who claimed that "repeating rifles were  
10 not commonly owned in the nineteenth century," presumably in  
11 response to our declaration from Professor Vorenberg.

12          THE COURT: I'm sorry. They said "they were not"?

13          MR. KELLY: They were not commonly owned in the  
14 nineteenth century.

15          THE COURT: She says they were not.

16          MR. DILLON: No.

17          THE COURT: No. I think you're wrong. I think you're  
18 opposite. I think she says --

19          MR. KELLY: Opposing counsel will correct me if I'm  
20 wrong.

21          THE COURT: Yeah, I think you're wrong. I think she  
22 said the opposite.

23          MR. DILLON: I don't believe that's the case that she  
24 said they were not.

25          (Court reporter interruption.)

1 MR. DILLON: John Dillon on behalf of the Miller  
2 defendants.

3 THE COURT: Yeah. So she said they were commonly  
4 owned.

5 MR. DILLON: Yeah.

6 THE COURT: So the Model 94 Winchester --

7 MR. DILLON: She was rebutting Dr. Saul Cornell's  
8 statement that these guns were, in fact, not common. That's  
9 what his testimony was, Your Honor.

10 THE COURT: All you got to do, if you look at  
11 Professor Cornell's declarations and you look at the website  
12 that he refers to -- to Winchester -- to the Winchester  
13 company, if you look at that website, you see that, in fact,  
14 they were commonly owned.

15 So, I mean, what are you going to do? You going to --

16 MR. KELLY: Your Honor, if --

17 THE COURT: How are you going to -- I mean, if you  
18 look at Mr. Vorenberg's declaration, and you look at -- for  
19 example, as I sit here right now, I can recall one instance  
20 that he talks about where two miners were mining for borax.

21 Do you recall the incidents?

22 MR. KELLY: Sorry. Do I recall the incidents, Your  
23 Honor?

24 THE COURT: Yeah.

25 MR. KELLY: I do not, no.

1           THE COURT: Okay. So two miners were mining for  
2 borax. And I can't recall whether it was Montana or Wyoming or  
3 Nebraska, or whatever. These are just two miners, two common  
4 folks that were miners for miners -- I mean, mining for borax,  
5 and they're attacked by a band of 40 Indians. And these two  
6 miners happen to have Henry rifles, and they were able to  
7 defeat the 40 Indians that were attacking them.

8           So the point -- the point was, if you look at Mr. --  
9 Professor Cornell's -- if you look at Professor Vorenberg's  
10 materials, which I have looked at, you see that the statement  
11 that they were not commonly owned is just not true.

12           For example, there's a statement in there about how  
13 after the Civil War many of the -- of the soldiers, when they  
14 were released from duty, were, in fact, allowed to buy the  
15 repeating rifles and took the repeating rifles home.

16           And you can do the statistical analysis, by the way,  
17 which I sat down and did because maybe I have too much time on  
18 my hands. But there was an awful lot of those weapons that  
19 wound up in civilian hands.

20           So, I mean, the evidence is there. You can call, I  
21 suppose, this person for a deposition and take her deposition.  
22 But I don't think, no matter what she says, it's not going to  
23 contradict her own experts' declarations and the materials that  
24 they themselves refer to.

25           You follow what I'm saying? Okay.

1           MR. KELLY: Your Honor, I do have another example of  
2 something we would want to explore and --

3           THE COURT: Okay. Give me one more.

4           MR. KELLY: So the Plaintiffs also include a  
5 declaration from Clayton Cramer --

6           THE COURT: Okay.

7           MR. KELLY: -- presumably in response to Professor  
8 Roth's position that mass murder was not a new phenomenon or --  
9 excuse me -- mass murder, yes, correct, is a new phenomenon at  
10 this point. And we would want -- to my knowledge, Mr. Cramer  
11 was not disclosed as an expert, was not deposed in any prior  
12 proceeding in Duncan.

13           And we would first want an opportunity for Professor  
14 Roth to examine the new evidence that the Plaintiffs have  
15 brought, as well as potentially depose Mr. Cramer on that  
16 issue.

17           THE COURT: Well, before I get to that issue, let me  
18 point out something, Mr. Kelly. I don't know how long you've  
19 been in this case. But you said something about -- going back  
20 to the reason why you needed three months; that you needed --  
21 that this was a new area and so on and so forth.

22           Did I get you right?

23           MR. KELLY: That's correct, Your Honor.

24           THE COURT: Yeah. How long you have been in this  
25 case, Mr. Kelly?



1 MR. KELLY: Several weeks, Your Honor.

2 THE COURT: It's not fair to dump you into a case like  
3 this. Mr. -- Professor Cornell has gone on record and stated  
4 -- in 2017, Professor Cornell stated that he had been  
5 researching and writing on the history and tradition of Second  
6 Amendment regulations for two decades. That's 20 years,  
7 20 years before 2017. We're now in 2023. Add five years to  
8 that; that's 25 years. That's a quarter of a century that  
9 Professor Cornell has been writing, researching on the history  
10 of and tradition of the Second Amendment.

11 And I've read an awful lot of that material.  
12 Professor Cornell cites to Spitzer. Spitzer cites to  
13 Vorenberg. Vorenberg cites to Bazilli. Bazilli, I think it  
14 is, who cites to -- these folks have been working on this for a  
15 really, really long time.

16 In 2000- -- well, as you probably know in the Rhode --  
17 Rhode case, I issued an opinion where I said that the State's  
18 regulation had no historical pedigree, and I was right. The  
19 Ninth Circuit asked the State to file a supplemental brief on  
20 the issue of the historical pedigree.

21 In response to that request from the Ninth Circuit,  
22 the State at Footnote 3, page 11 of its response, cites to Saul  
23 Cornell and Nathan DeNino, "A Well Regulated Right. The Early  
24 American Origins of Gun Control," 2004, surveying firearms  
25 regulations from Founding era through the nineteenth century.

1           Mr. Kelly, with all due respect, Mr. Cornell and all  
2 these other folks have been researching and writing on this  
3 issue for 25 years. We're not here, looking -- this is not a  
4 question for the missing link. We're not looking for truffles.  
5 If it's a history and tradition, 25 years of research and  
6 writing should have disclosed it by now.

7           And as you know, probably in Bruen -- I think it was  
8 in Bruen. It might have been in Heller, as well, where the  
9 Court said, "Look, 'a lot of' doesn't show a history and  
10 tradition." Right. So I don't think -- I mean, with all due  
11 respect, I understand what you're doing, and I appreciate that.  
12 And I'm sorry that you got dumped into this just a few -- just  
13 a few weeks ago.

14           But, realistically, you don't need more time. I might  
15 give you a little more time to depose the one expert, and that  
16 might be it, but that's about it. Okay.

17           MR. KELLY: Thank you, Your Honor.

18           THE COURT: All right. Is there anything else you  
19 wanted to add?

20           MR. KELLY: Actually, a point of clarification, Your  
21 Honor.

22           THE COURT: Sure. Go ahead.

23           MR. KELLY: Would Your Honor like us to submit one set  
24 of briefing for all four matters, or one for each matter?

25           THE COURT: I'm open to suggestions. I don't want to

1 have to be rereading the same stuff over and over and over  
2 again. So what do you think?

3 MR. KELLY: Your Honor, I think they should be heard  
4 separately. I think as Your Honor said, you know, there is  
5 some overlap here in terms of the historical analysis,  
6 et cetera. But there's also enough nuance among the cases  
7 that, I think, both, as a matter of fairness, and to make your  
8 burden easier, they should be heard separately.

9 For example, I think the textual analyses is different  
10 in these case; the first prong under Bruen as to whether the  
11 regulated items constitute arms under the Second Amendment.  
12 And our position is a different analysis in each case.

13 THE COURT: Okay. Well, what you say makes sense.  
14 All right. So how about if what we do is we have a joint  
15 historical analysis? In other words, what I suggested at the  
16 very beginning of this hearing? How about if we have that as  
17 one?

18 And, yes, I can understand how you might want to  
19 argue, for example, that in the Fouts case, looking at the  
20 historical analysis, there's, you know, history and tradition.  
21 And that you might want to brief that separately.

22 Yeah, I can understand what you're saying. I'll hear  
23 from the Plaintiffs in just a second, see if they have a  
24 different idea. But that makes sense. I can go along with it.

25 MR. KELLY: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 Anyone else?

3 All right. Let's go back to the Plaintiffs. Anyone  
4 have anything you want to comment in response?

5 MR. BRADY: Sure, Your Honor. Sean Brady on behalf of  
6 the Plaintiffs.

7 I agree. I think that makes sense. But to address  
8 the nuance, there are some things that are going to sort of be  
9 boilerplate with respect to this compendium of Excel  
10 spreadsheet of the laws. If the State prepares that, they're  
11 going to have to prepare that for all the cases. Right. So it  
12 wouldn't be an additional burden on them.

13 THE COURT: I want you to look at it, and see if you  
14 agree or disagree because I want to know, you know, if there's  
15 disagreement. Right.

16 MR. BRADY: If Your Honor would like us to meet and  
17 confer, you know -- I guess our position is that it's the  
18 State's burden to research and present these laws, and they've  
19 had adequate time for that. We don't need to get into --

20 THE COURT: I think I agree. But I think it's always  
21 really a good idea to meet and confer. So if you could do  
22 that, that would be wonderful.

23 MR. BRADY: Absolutely. And if Your Honor wants us to  
24 do that prior to -- instead of dressing it in our opposition  
25 and meeting and conferring beforehand, we're more than happy to

1 do that.

2 THE COURT: Why don't you do that. And then if  
3 there's any disagreement, if there's any disagreement, then we  
4 can deal with that later. Right.

5 So here's something that I do with jury instructions.  
6 I ask the parties to meet and confer and come up with an  
7 agreed-upon body of jury instructions. Okay. And then if  
8 there are any jury instructions that they disagree with, then  
9 they can file a brief to tell me what instructions they  
10 disagree with and what other instructions they want me to give.

11 Perhaps this is a good policy for us to apply here.  
12 If you meet and confer and agree on the historical analysis,  
13 then that's great. You can submit that. And if there are any  
14 disagreements, then you can submit that separately.

15 How's that? That work?

16 MR. BRADY: I think that works, Your Honor.

17 THE COURT: Mr. Kelly?

18 MR. KELLY: Yeah, that works for us, Your Honor.

19 THE COURT: Great.

20 MR. BRADY: This meet-and-confer process, though, is  
21 there going to be another status conference or -- that's my  
22 only concern. Or are we just going to address it in our  
23 briefing?

24 THE COURT: No. I don't think we need another  
25 meet-and-confer conference after this. I think -- look, I

1 don't want to slow-walk these cases. These are important cases  
2 both to the State and to the Plaintiffs and the people that  
3 insist that they have these rights, and I think we need to move  
4 these cases along.

5 So a meet-and-confer. Give me an agreed-upon  
6 historical analysis, and then what I will do is I will give you  
7 a time period for that to be filed. I'll give you a time  
8 period for additional briefs to be filed, and then we're going  
9 to have hearings, and we're going to put these cases to bed.

10 MR. MOROS: Your Honor, one question.

11 Is the State to be limited in the presentation of its  
12 laws to laws before the year 1900? Because I know in their  
13 supplemental briefing, they went into twentieth century laws,  
14 and our position is those aren't relevant. But if you want a  
15 comprehensive view, just to get everything.

16 THE COURT: You know, frankly, I don't see much point  
17 in those because I think that there would be so many laws. I  
18 mean, let's face it, after -- there came a point when -- when  
19 they began to grow exponentially.

20 I think in the Bruen opinion it talks about -- the way  
21 I see it, it places greater emphasis on those laws that were,  
22 essentially, in effect at the time the Second Amendment was  
23 adopted, and then with a secondary emphasis at the time that  
24 the Fourteenth Amendment incorporated the Second Amendment by  
25 reference. I think that's the time period.

1           In fact, I think the one -- if I'm not mistaken, the  
2 one statute that regulates -- that was submitted in the Fouts  
3 case, it talks about machine guns and automatic rifles, is a  
4 1927 statute, if I'm not mistaken; which, frankly, I thought  
5 was irrelevant, anyway.

6           So why don't we limit it to -- how about this? How  
7 about, let's say, 20 years -- how about an arbitrary and  
8 capricious number that I'm going to give you? Twenty years  
9 after the Second Amendment was incorporated by the Fourteenth  
10 Amendment -- or the Fourteenth Amendment was adopted. How's  
11 that?

12           MR. MOROS: So, 1888. Okay.

13           THE COURT: All right. Twenty years after the  
14 Fourteenth Amendment was adopted.

15           MR. KELLY: Your Honor, we would object to that.

16           THE COURT: Why?

17           MR. KELLY: In Bruen, it specifically says that  
18 statutes after the Fourteenth Amendment's ratification can be  
19 used as evidence so long as they do not conflict with the  
20 restrictions that were in place prior to then around the  
21 Founding and the Reconstruction period.

22           So we would want to reserve our right to introduce  
23 those laws if -- if we do, in fact, do that.

24           THE COURT: Can you cite me to the page in Bruen?

25           MR. KELLY: Yes, Your Honor.



1           THE COURT: And if that were the case, why would --  
2 why would the Supreme Court have overturned the New York  
3 statute on concealed carry? Since there were -- I would  
4 imagine there's probably 100, if not 200, statutes that have  
5 prohibited the methodology for obtaining concealed carry  
6 permits.

7           MR. KELLY: So, Your Honor, the page we're referring  
8 to is at 142, Supreme Court page 2153, Note 28.

9           THE COURT: Can you read it for me? Because I -- I  
10 don't have a photographic memory.

11           MR. KELLY: Sure, Your Honor. Just give us one  
12 moment.

13           Your Honor, the footnote says: "We will not address  
14 any of the twentieth century historical evidence brought to  
15 bear by respondent or their amici. As with their  
16 late-nineteenth-century evidence, the twentieth century  
17 evidence presented by Respondent's in the amici --"

18           (Court reporter interruption.)

19           MR. KELLY: "-- the twentieth century evidence  
20 presented by Respondents and their amici does not provide  
21 insight into the meaning of the Second Amendment when it  
22 contradicts earlier evidence."

23           And we would argue that that footnote would allow us  
24 to introduce statutes and regulations post-Reconstruction so  
25 long as they do not contradict earlier restrictions.

1           THE COURT: The problem with that, though, as I  
2 said -- how many -- how many laws have been enacted? I mean,  
3 just look at California. Let's just take, for example, the  
4 Miller case, right, the AR-15-type regulations.

5           How many of those laws have been enacted since 1927?  
6 Lots and lots and lots and lots. But how does that help me  
7 decide the history and tradition of regulation of rifles --

8           MR. KELLY: I think, Your Honor --

9           THE COURT: -- at the time the Second Amendment was  
10 adopted, or at the time the Fourteenth Amendment was adopted?  
11 All that tells me is -- has happened after the Civil War when  
12 states found out that, yes, they could restrict certain  
13 firearms. Right. That all of a sudden there was an explosion  
14 of restrictions because the states found out, "Hey, guess what?  
15 We can do this." So then they did it.

16           But how does that help me determine the history and  
17 tradition of these laws at the time the Second Amendment was  
18 adopted or at the time that the Nineteenth -- I mean the  
19 Fourteenth Amendment was adopted?

20           MR. KELLY: Your Honor, I'm only speculating that  
21 these laws are out there. I personally do not know. I think  
22 we would just want to reserve our right and not be barred from  
23 doing so should it come to that.

24           THE COURT: I'll tell you what I'll do. I'll let you  
25 file a separate one. You can file -- you can file a separate

1 survey, and we'll call it "Post 20 years after" -- "20 Years  
2 After the Ratification of the Fourteenth Amendment."

3 How's that?

4 MR. KELLY: That sounds good, Your Honor.

5 THE COURT: And include as many as you want. In fact,  
6 the more the merrier.

7 MR. DILLON: Your Honor, if I may?

8 THE COURT: Yes, go ahead.

9 MR. DILLON: I just wanted to clarify on the parameter  
10 of exactly what you're requesting. As I heard you, you're  
11 looking for a single spreadsheet-style chronological order of  
12 all the statutes, ordinances, restrictions that the State can  
13 come up with that identify what was restricted, what act was  
14 restricted, whether it was a law that was repealed or not  
15 repealed, and whether or not it was ever brought before a  
16 court.

17 And then they'll present -- they'll draft that  
18 document with no argument, no expert witness testimony.

19 THE COURT: Correct.

20 MR. DILLON: It will just be a straight list of the  
21 laws. We will have a chance to review it as Plaintiffs. And  
22 like a summary judgment, if we have a contested issue of the  
23 summary of the law that they present, we can note that contest  
24 in the -- you know, a joint document? Is that what you're --

25 THE COURT: Sounds reasonable. Sounds reasonable to

1 me.

2 MR. DILLON: No problem. Thank you, Your Honor.

3 MR. KELLY: Your Honor, I think we would object to  
4 that as well. I think we would want, if we need to, to  
5 introduce experts to interpret some of the laws and the  
6 standards --

7 THE COURT: No.

8 MR. KELLY: -- in the language --

9 THE COURT: No.

10 MR. KELLY: -- and the statute --

11 THE COURT: No. Look -- no, no.

12 Mr. Kelly, with all due respect, I don't need -- every  
13 one of these experts that you've put forth, I have read, just  
14 like experts that they have put forth, like Mr. Copill, for  
15 example. Your experts -- these are people that have, you know,  
16 biased points of view. I mean, Mr. Bosey, for example -- I  
17 hope I'm pronouncing his name. The fellow who worked for --

18 MR. MOROS: Kimber, Your Honor.

19 THE COURT: Kimber. Yeah. Who at some point in time  
20 had an epiphany and realized that all the work that he'd been  
21 doing for all these years, selling these weapons to the public  
22 was not good. And now he works -- he's a consultant for  
23 Everytown -- I'm trying to remember.

24 Anyway, look. These people's opinions of what these  
25 statutes say, right, means nothing. It means nothing. It's

1 like, I remember -- I think it was Justice Brier in -- I think  
2 it was Bruen, who talked about, "Well, we need to have this  
3 factual record," and this and that, what have you.

4 No. 702 says that the admission of expert testimony  
5 is help -- is possible if, because of the expert's knowledge,  
6 skill, or experience, it will assist the trier of fact. Okay.

7 But there's nothing. I mean, I've read these  
8 declarations. Every one of these folks come in here with a  
9 biased -- it's not like they're really neutral experts, okay,  
10 or they're not experts who've come up on these opinions as a  
11 result of these cases, okay, doing research for these cases.

12 These are all people that already come with  
13 preconceived ideas and opinions, but their opinion is not worth  
14 any more than your opinion or her opinion. They're going to  
15 tell me, "Well, in my opinion, if you look at this statute,  
16 this statute means that -- you know, that the State of Wyoming  
17 regulated concealed carry of brass knuckles," and so I can read  
18 that. I can figure that out by myself.

19 MR. KELLY: Well, Your Honor, I think the issue that  
20 we might have with simply creating a spreadsheet and submitting  
21 it to the Court doesn't take into account that restrictions  
22 were found in places other than statutes. In our supplemental  
23 briefing, we -- Professor Vorenberg testified as to how, for  
24 example, in the Reconstruction period, the U.S. Army acted to  
25 restrict firearms with magazines or carrying more than ten

1 rounds.

2 THE COURT: When was the Reconstruction period? It  
3 was after the Civil War.

4 MR. KELLY: Correct, Your Honor.

5 THE COURT: Yeah. It was after the Fourteenth  
6 Amendment?

7 MR. KELLY: It was during the same period, Your Honor;  
8 during the same time period.

9 THE COURT: And why would I want to give -- in fact, I  
10 think there was some discussion about this. I thought maybe it  
11 was in Bruen.

12 Why would I want to give any credit to -- to what the  
13 U.S. Army was doing in their territories? In fact, I think,  
14 wasn't it Bruen that somewhat criticizes applying laws that  
15 were regulations that were used in territories that --

16 MR. KELLY: Your Honor, it goes to the history and  
17 tradition of firearm regulations. That may not be a statute.

18 THE COURT: But, look. If it's the State's position  
19 that there's a long history and tradition to regulating  
20 firearms, if that's your position, you don't need to present  
21 any evidence. I'll buy that. I understand that.

22 Any time the State can get their -- the ability to  
23 regulate something, they'll do it, and they've been regulating  
24 firearms for a long time. Right. But that doesn't mean that  
25 it's an analog to the particular statute that's at issue in the

1 cases that I have before me.

2 So the fact that, for example, in the territories in  
3 the Reconstruction period, the Army may not have wanted to have  
4 people to have this, that or whatever, that doesn't help me.  
5 It's not an analog.

6 Yes, we know. We know. We know. We don't have -- I  
7 don't need to take testimony of the fact that there's a history  
8 and tradition in the United States in regulating firearms.  
9 Right. But if that were the test, if that were the test,  
10 Heller would not have been decided the way it was, and neither  
11 would McDonald, and neither would Bruen, and neither would  
12 Caetano.

13 That's not the test. But the test is, is there a  
14 reasonable analog? It doesn't have a twin. It doesn't have to  
15 be a twin. But is there a reasonable analog in the history and  
16 tradition of firearm regulation or arms regulation? Because in  
17 the Fouts case, we're dealing with billy clubs.

18 Is there an analog in the history and tradition of  
19 regulating this type of weapon, this type of conduct, this type  
20 of behavior? That's what we're looking at.

21 So, anyway, all right. Anyone else?

22 Yes.

23 MR. O'BRIEN: Your Honor, just wanted to check.

24 With respect to Fouts and Rhode, what the Court's  
25 requesting here, what effect does it have on kind of the



1 existing posture of those cases?

2           With respect to Fouts, the Plaintiffs have an  
3 opposition brief due on the 22nd, currently. And Rhode, there  
4 hasn't been any order with respect to briefing. So I'm just  
5 trying to check and see what's the -- what is kind of the  
6 process going forward.

7           THE COURT: Thank you. I appreciate your mentioning  
8 that.

9           So here's what I'd like for you to do. As I said,  
10 Professor Cornell, Spitzer, and some of these other folks, they  
11 have been working on this for a really long time. So it really  
12 shouldn't take them really long to be able to come up with  
13 this -- with a survey that I've requested. So I'm going to ask  
14 that that be done within 30 days. Okay.

15           I will then -- given that, I will then give each side  
16 an opportunity to file a brief, and the reason why I use the  
17 word "brief," it's because I want it to be brief. Okay. I'm  
18 not going to -- I'm not going to require a 25-page maximum, but  
19 I don't think it needs to be 25 pages for you to tell me what  
20 the analogs are that I should apply in your case. And I'll  
21 give you 30 days to do that. Then I'll give you 10 days to  
22 each side to file a response.

23           Now, Mr. Kelly, you said you wanted to take somebody's  
24 deposition, and I'm more than happy to give you a chance to  
25 depose someone. See what happens.

1           So who did you want to depose?

2           MR. KELLY: Mr. Cramer, Your Honor.

3           THE COURT: Mr. Cramer. Whose witness is Mr. Cramer?

4           MS. BARVIR: Clayton Cramer is the Duncan Plaintiffs'  
5 declarant. He was responding, I think, to Professor Roth.

6           I would think that if Your Honor is going to give the  
7 State some time to depose our witness, we should also get the  
8 chance to depose Mr. Roth. He was also not disclosed at any  
9 point prior to filing that.

10          THE COURT: You each have 20 days to work out an  
11 agreement to -- one, to depose Mr. Cramer, to depose Mr. Roth.  
12 Okay.

13          MR. STAMBOULIEH: Yes, Your Honor. I'm with --  
14 Stephen Stamboulieh for the Fouts Plaintiffs.

15          Plaintiff Cramer is also going to be our expert even  
16 though we're outside the discovery deadline. He has,  
17 obviously, not been disclosed to them as an expert, just like  
18 their witnesses were not disclosed to us as an expert.

19          I'm not really sure that he needs to be deposed since  
20 he's just going to be responding to Mr. Spitzer's declaration  
21 of what the -- what he's found the historical analogs to be.  
22 So I'm not really sure, other than wasting money and time, what  
23 a deposition would bring to them.

24          I did have one question, and I -- the page length for  
25 the supplemental briefs, my understanding of the local rules is

1 that we were limited to 25 pages. We have not filed motions to  
2 strike. We have not tried to burden the docket with anything.  
3 I figured I would just ask the Court.

4 Do we have the same page limit that the Defendants do,  
5 which I believe was 36 pages? We're not going to burden --

6 THE COURT: I don't think we need 36 pages, especially  
7 if we're breaking it up. Okay. So we've got -- so we have  
8 the -- so we have the historical survey. Right. I don't know  
9 why you would need 36 pages. So why would you need 36 pages to  
10 tell me that the history and tradition of arm regulations --  
11 I'm going to use the Fouts case -- for billys is consistent  
12 with the history and tradition of that which has been provided  
13 to me by way of that survey? You don't need 36 pages;  
14 25 pages, max, for any opening brief, and 10 pages for any  
15 reply.

16 MR. STAMBOULIEH: Let me go back one step, Your Honor.  
17 They filed the supplemental brief that this Court  
18 ordered. I'm not sure the actual date; October 17th, I  
19 believe. And they took 36 pages. Ours is coming up. The  
20 response is due on the 22nd.

21 So my question to the Court, and perhaps the Court  
22 just answered me when you limited it to 25 pages. The reason  
23 that we might need to go a little bit beyond that page limit,  
24 Your Honor, is they've raised this issue and said that there's  
25 really been no historical analysis of the "dangerous" -- and

1 they corrected it to be "or unusual" instead of "dangerous and  
2 unusual" language.

3 THE COURT: Yeah. I noted that. I noted that. I  
4 found that to be rather distressing, even though in the -- in  
5 the past, they have referred to some instances as "dangerous or  
6 unusual." But as Justice Alito pointed out in his concurring  
7 opinion in Caetano, anyone with a ninth-grade education can  
8 read the Heller opinion and determine that, in fact, it is  
9 "dangerous and unusual," i.e., the conjunctive, not a  
10 disjunctive.

11 So I don't know why that keeps popping up. I mean, I  
12 heard some supposedly distinguished legal scholar make that  
13 same error, and I don't know whether that's intentional or not.  
14 I hope that's not intentional.

15 MR. STAMBOULIEH: Well, the Supreme Court said  
16 "dangerous and unusual," Your Honor, so we're going to go with  
17 what the Supreme Court --

18 THE COURT: That's a good thing to do.

19 MR. STAMBOULIEH: Right.

20 THE COURT: That's a really good thing to do.

21 MR. STAMBOULIEH: So my question, Your Honor -- and  
22 I'm sorry for taking so long on this.

23 THE COURT: It's okay.

24 MR. STAMBOULIEH: We have briefed "dangerous and  
25 unusual." It takes us beyond 35 pages. It's about 35 pages.

1 We've briefed it. So to the extent the Court wants to see  
2 it -- if the Court limits us to 25, we'll cut the "dangerous  
3 and unusual" and just cite back "see Supreme Court. See  
4 Justice Alito" who references Caetano --

5 THE COURT: Are you saying -- are you talking about  
6 whether or not the weapon is dangerous and unusual, or are you  
7 talking about the fact that the test that some folks referred  
8 to it as "dangerous or unusual"? You follow what I'm saying?  
9 Are you talking about the weapon? Because, certainly, I can  
10 understand, particularly in your case, talking about whether or  
11 not the weapon is or is not dangerous and unusual.

12 But I don't want to talk about whether or not the test  
13 is "dangerous and unusual" or "dangerous or unusual." That has  
14 been decided by somebody who's way above my pay grade. Okay.

15 MR. BECK: Alan Beck for the Plaintiffs Fouts, Your  
16 Honor.

17 Our briefing also indicates that the phrase "dangerous  
18 and unusual" doesn't actually refer to any sort of intrinsic  
19 property of an arm. Historically, in Heller, the Court  
20 references the tradition of prohibiting carrying "dangerous and  
21 unusual" weapons.

22 And after we took a look at what that actually was,  
23 that -- that typically refers to prohibitions on carrying in  
24 certain manners, that were actually what terrified people.

25 So our position is that the possession of any weapon

1 cannot be justified simply through this historical tradition of  
2 carrying dangerous and unusual weapons, because it doesn't  
3 refer to types of weapons; it refers to certain types of  
4 conduct with weapons.

5 And in light of the fact that the State's brief was  
6 36 pages, we're just hoping to have an equal-length brief as  
7 the brief they filed so we can demonstrate that to the Court,  
8 Your Honor.

9 THE COURT: And you've already prepared this, you're  
10 telling me?

11 MR. BECK: Yes, Your Honor.

12 THE COURT: Okay. File it.

13 MR. BECK: Thank you.

14 THE COURT: File it. Thank you for making my life  
15 that much more difficult, but whatever. Okay. File it. I'm  
16 done.

17 Okay. So -- so --

18 MR. O'BRIEN: Your Honor --

19 THE COURT: You have 30 days to file the survey. You  
20 have 30 days after that to file any brief that you wish to  
21 file. And this goes for both sides. Having looked at the  
22 survey, having made your decisions, et cetera, you've got  
23 30 days after that to file your brief. You've got 10 days  
24 after that to file any opposition that you want to in that  
25 brief. You have 20 days to depose Mr. Cramer and Mr. Roth.

1           Anything else?

2           MR. O'BRIEN: Your Honor, if I may. With respect to  
3 the survey due in 30 days --

4           THE COURT: Yes.

5           MR. O'BRIEN: -- we would request, if possible, to  
6 extend that to 60 days.

7           THE COURT: I could probably do it -- if I had the  
8 time and the resources, I think I could probably do that in  
9 probably less than two weeks. The State has unlimited  
10 resources. You can do this. Trust me, you can do it. I've  
11 looked at it. And if I had the resources and the time to do  
12 it, I could do it in probably -- I could probably do it in a  
13 week.

14          MR. O'BRIEN: Well, you know, I understand where the  
15 Court is coming from.

16          I think that there's a couple of issues. One, we do  
17 have a holiday period, and I think that our resources will be  
18 limited at least, you know --

19          THE COURT: Yeah. I hear you. I feel your pain.

20          MR. O'BRIEN: -- to the last week, so I think to  
21 expand beyond that, that takes away one week.

22          Also, as we note, even in Fouts, even, you know, in a  
23 case where, you know, we provided a lot of that historical, you  
24 know, information, it's still, I think with respect to what the  
25 Court's asking for, is going to, you know, require, you know,



1 some additional time, especially in researching each of those  
2 laws and determining whether or not they were challenged, and  
3 what the -- what the disposition was in those cases.

4 THE COURT: I would imagine, Mr. O'Brien, with all due  
5 respect, that whoever came up with that -- I don't know,  
6 whatever it is, 40 pages, 30 pages of statutes or whatever,  
7 already has, pretty much, that information. And if they  
8 submitted it to the Court for purposes of persuading the Court,  
9 they should also have the information to determine, for  
10 example, whether or not that statute has been previously held  
11 unconstitutional or constitutional, and should be able to  
12 provide me with a citation.

13 I don't think 30 days is unreasonable. I understand,  
14 but my order remains. All right.

15 Is there anything else? I'm sorry. I don't --

16 Yeah, go ahead.

17 MR. O'BRIEN: One more, Your Honor.

18 You know, we would just also request with respect  
19 to -- as you're allowing for -- I believe, in the Miller or the  
20 Duncan cases, for deposing Professor Cramer. I don't know what  
21 Professor Cramer or Mr. Cramer will testify to with respect to  
22 Fouts. I would -- if we need to depose him, and I don't know  
23 if they're -- you know, we want to have that opportunity to do  
24 so if we need.

25 THE COURT: Well, if you don't know what you want from

1     them in Fouts, what's the point of deposing him?

2             MR. O'BRIEN: Well, we need to have an opportunity to  
3     review his -- his declaration and --

4             THE COURT: Was the declaration already filed or not?

5             MR. STAMBOULIEH: The declaration is not filed yet,  
6     Your Honor. The declaration, I would think, is probably  
7     substantially complete. It's a rebuttal of Mr. Spitzer's  
8     expert report.

9             THE COURT: Tell you what we'll do. Let's leave that  
10    up in the air. You take a look at it. When you get the  
11    opposition -- opposition, you get the declaration.

12            I've read Mr. Spitzer's declaration. I'd say it's  
13    probably one of the better ones I think that I've read. If  
14    after you read -- and, hopefully, you'll read it pretty  
15    quickly. But it isn't Mr. Cramer -- or is it Professor or  
16    Mr. Cramer? I hate to insult people. But whatever it is he  
17    says, if you think you need to depose him, let me know and let  
18    me know quickly.

19            And if I decide that, in fact, that deposition is  
20    necessary, I'll probably order that deposition to be taken on  
21    very short notice, in which case I will allow you to take the  
22    deposition of Mr. Spitzer. And we'll take it from there.

23            We're going to get all this done, folks, in the time  
24    period that I have set.

25            As I said, these are important cases to the State and

1 to the Plaintiffs and to the -- to the People of the State of  
2 California. So I want to move it along. And that's that.  
3 Okay. I really appreciate you all being here.

4 MR. BRADY: Regretfully, Your Honor, I have to raise  
5 one issue --

6 THE COURT: What's that?

7 MR. BRADY: -- about the Rhode case that may,  
8 unfortunately, complicate things.

9 And that is, the Rhode case, the analysis is a little  
10 bit different than these other cases which have to do with  
11 whether these specific items, right, are protected. Here we're  
12 talking about -- I don't think that there's any dispute that  
13 ammunition is protected, and sale of it. But what I suspect  
14 the State, and what we've seen in the Ninth Circuit briefing,  
15 their position is going to be that background checks on any  
16 arm, regardless, are going to be covered historically, because  
17 Bruen suggested that background checks on carry license are  
18 going to be protected.

19 Our position is, obviously, going to be ammunition is  
20 different, right, because the State admits that this is the  
21 very first time that ammunition background check has ever been  
22 put in place. So our position is going to be that's treated  
23 differently.

24 But I think that we need, potentially, a backup  
25 argument to make in case the State's argument carries the day

1 that background checks are generally okay or outside the scope  
2 of the Second Amendment, and that is to point out that even if  
3 background checks on ammunition are outside of the scope of the  
4 Second Amendment, at some point the burden on them becomes so  
5 great that --

6 THE COURT: Well, I already decided that. Didn't I  
7 already decide in the ammunition case --

8 MR. BRADY: Yes.

9 THE COURT: -- that I thought that requiring people to  
10 pay \$19 every time they buy ammunition is unreasonable?

11 MR. BRADY: Correct.

12 THE COURT: I thought I decided that.

13 MR. BRADY: You did, Your Honor.

14 THE COURT: So we don't need to rehash stuff that  
15 we've already gone through.

16 I think the question -- I think the question is: Is  
17 there any history or tradition that supports these background  
18 checks?

19 Now, with that, Counsel, let me just say this. The  
20 Bruen case did say that background checks were okay, right,  
21 with regard to the concealed carry. Now, they also said,  
22 however, that you can't impose unreasonable restrictions  
23 because, you know, you can regulate the Second Amendment out of  
24 existence by imposing regulations on something. Right.

25 MR. BRADY: Correct. And that's what I was getting

1 at, Your Honor. If you're saying that your previous findings  
2 are the law of the case and the findings up to this point --

3 THE COURT: I'm not changing my mind.

4 MR. BRADY: Okay. Then I -- so no --

5 THE COURT: You know, but I do want to raise  
6 something, by the way. You know, I'm glad you mentioned that.  
7 I'm going to take a wild guess that your position is that any  
8 background check for buying ammunition is not reasonable. I'm  
9 putting words in your mouth. Okay.

10 Now, I said that this regulation -- which is not what  
11 the legislature had originally enacted; right?

12 MR. BRADY: Correct.

13 THE COURT: This -- the way the bureaucracy has now  
14 regulated purchases of ammunition is unreasonable. But I guess  
15 what I'm offering to you folks to talk about is whether or  
16 not -- and I don't expect that this will be fruitful, but I  
17 have to offer it because I think it's possible that if there  
18 was a consent decree that said that the regulation of  
19 purchasing ammunition as set forth by the legislature in the  
20 legislative enactment would be what would be required, my  
21 analysis might be very different.

22 And so I'm thinking that that perhaps might be a way  
23 to compromise a resolution of that case. I just offer that as  
24 an idea, folks, but you can do with it whatever you wish.

25 I've spent about as much time on this case as I'm

1 going to. So I need to go, unless there's something really,  
2 really, really important you need to address.

3 MR. BECKINGTON: Your Honor, I apologize for testing  
4 your patience. I'll be very brief.

5 THE COURT: Okay.

6 MR. BECKINGTON: Just for the clarification of the  
7 record, we did have a motion for reconsideration. We did have  
8 requests, I think, both in the Miller and in Fouts and Rhode  
9 for the additional time to do discovery, to submit evidence,  
10 et cetera.

11 Is the Court making a formal rule on those matters --

12 THE COURT: Nothing -- nothing is -- the only thing  
13 that has changed -- the only thing that has changed since I  
14 issued my rulings on the cases that I've issued rulings is what  
15 Bruen -- the Bruen opinion says, which is that we consider the  
16 history and tradition of the firearm regulation or the arm  
17 regulation. Okay. That's the only thing that has changed.

18 All right. Thank you. Thank you very much.

19 MR. O'BRIEN: Just one other thing, Your Honor.  
20 Apologize. Is the Court going to be issuing a written order?  
21 We did the best we can to kind of keep track of what you were  
22 looking for with respect to the survey, but I just wanted to  
23 clarify that as well.

24 THE COURT: Well, you couldn't write that fast?

25 MR. O'BRIEN: I tried, Your Honor.

1 MR. DILLON: We have to summarize, Your Honor.

2 MR. O'BRIEN: Yeah.

3 THE COURT: We'll do our best. I'll issue a written  
4 order. Thank you very much. And I appreciate you all being  
5 here.

6 (The proceedings were adjourned at 11:50 a.m.)

7 -oOo-

8 **C E R T I F I C A T E**

9 I, Abigail R. Torres, certify that I am a duly  
10 qualified and acting Official Court Reporter for the United  
11 States District Court; that the foregoing is a true and  
12 accurate transcript of the proceedings as taken by me in the  
above-entitled matter on December 12, 2022, and that the format  
used complies with the rules and requirements of the United  
States Judicial Conference.

13 DATED: December 20, 2022, San Diego.  
14 S/ABIGAIL R. TORRES

15 Abigail R. Torres, CSR No. 13700  
U.S. Official Court Reporter

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## **EXHIBIT 16**

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8 *Attorneys for Defendant Rob Bonta,*  
*In his official capacity as Attorney*

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 **VIRGINIA DUNCAN et al.,**

13 Plaintiffs,

14 v.

15 **ROB BONTA, in his official capacity**  
16 **as Attorney General of the State of**  
17 **California,**

18 Defendant.

Case No. 3:17-cv-01017-BEN-JLB

**DECLARATION OF JOHN D.  
ECHEVERRIA RE SUBMISSION  
OF SURVEYS IN RESPONSE TO  
THE COURT'S ORDER ENTERED  
ON DECEMBER 15, 2022**

Dept: 5A  
Judge: Hon. Roger T. Benitez

Action Filed: May 17, 2017

19 I, John D. Echeverria, declare as follows:

20 1. I am a Deputy Attorney General with the California Department of  
21 Justice and serve as counsel to Defendant Rob Bonta, in his official capacity as  
22 Attorney General of the State of California ("Defendant"), in the above-captioned  
23 matter. Except as otherwise stated, I have personal knowledge of the facts set forth  
24 in this declaration, and if called upon as a witness I could testify competently as to  
25 those facts.

26 2. On December 15, 2022, the Court entered an Order providing that  
27 "[t]he state defendants shall create, and the plaintiffs shall meet and confer  
28

1 regarding, a survey or spreadsheet of relevant statutes, laws, or regulations in  
2 chronological order.” Dkt. 134. The Order provides:

3 The listing shall begin at the time of the adoption of the Second  
4 Amendment and continue through twenty years after the Fourteenth  
5 Amendment. For each cited statute/law/regulation, the survey shall  
6 provide: (a) the date of enactment; (b) the enacting state, territory, or  
7 locality; (c) a description of what was restricted (e.g., dirks, daggers,  
8 metal knuckles, storage of gunpowder or cartridges, or use regulations);  
9 (d) what it was that the law or regulation restricted; (e) what type of  
10 weapon was being restricted (e.g., knife, Bowie Knife, stiletto, metal  
11 knuckles, pistols, rifles); (f) if and when the law was repealed and  
12 whether it was replaced; (g) whether the regulation was reviewed by a  
13 court and the outcome of the courts review (with case citation).  
14 Defendants may create a second survey covering a time period following  
15 that of the first list. If opposing parties cannot agree on the inclusion of a  
16 particular entry on the survey, the disagreement shall be indicated and  
17 described on a separate list.

18 3. The parties have met and conferred by email, as required by the  
19 December 15 Order. In compliance with the Court’s Order, Defendant is hereby  
20 submitting Defendant’s two surveys of relevant laws with a separate list of  
21 Plaintiffs’ disagreements about the relevance of those laws.

22 4. Attached hereto as **Exhibit 1** is a true and correct copy of Defendant’s  
23 Survey of Relevant Statutes (Pre-Founding – 1888).

24 5. Attached hereto as **Exhibit 2** is a true and correct copy of Defendant’s  
25 Survey of Relevant Statutes (1889 – 1930s).

26 6. Attached hereto as **Exhibit 3** is a separate list of Plaintiffs’  
27 Disagreements re Defendant’s Survey of Relevant Statutes (Pre-Founding – 1930s).

28 7. The surveys have been filed in compliance with the Court’s Order  
directing the parties to identify all relevant laws, statutes, and regulations from the  
time of the Second Amendment to twenty years after adoption of the Fourteenth  
Amendment. In compliance with that Order and in recognition of the historical  
inquiry mandated by *Bruen*, the spreadsheets identify hundreds of relevant firearms  
laws, some of which were drafted well before the Thirteenth Amendment’s  
abolition of slavery and the Fourteenth Amendment’s Equal Protection  
Clause. While our subsequent briefing, as ordered by the Court, will explain in

1 more detail the historical context and relevance of such laws, the Attorney General  
2 emphasizes his strong disagreement with racial and other improper discrimination  
3 that existed in some such laws, and which stand in stark contrast to California's  
4 commonsense firearm laws, which are designed to justly and equitably protect all  
5 Californians. The listing of such racist and discriminatory statutes should in no  
6 way be construed as an endorsement of such laws by the Attorney General or his  
7 counsel in this matter.

8 I declare under penalty of perjury under the laws of the United States of  
9 America that the foregoing is true and correct. Executed on January 11, 2023, at  
10 San Francisco, California.

11 *s/ John D. Echeverria*

12 John D. Echeverria  
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***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)<sup>1, 2</sup>**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
1	1383	England	7 Rich. 2, ch. 13 (1383)	Prohibited possession of launcegays. Punished by forfeiture of the weapon.	Launcegay		
2	1396	England	20 Rich. 2, ch. 1 (1396)	Prohibited possession of launcegays. Punished by forfeiture of the weapon.	Launcegay		
3	1541	England	33 Hen. 8, ch. 6 §§ 1, 18 (1541)	Prohibited possession of any crossbow, handgun, hagbutt, or demy hake. Exempted subjects living within 12 miles of the Scottish border. Punishable by forfeiture or payment of 10 pounds.	Pistol; Crossbow		
4	1606	England	4 Jac. I, ch. 1 (1606)	Repealed exemption for subjects living with 12 miles of the Scottish border for the keeping of crossbows, handguns, and demy hakes.	Club; Other weapon		
5	1664	New York	The Colonial Laws of New York from the Year 1664 to the Revolution . . . , at 687 (1894)	Prohibited a slave from possessing or using a gun, pistol, sword, club, or other kind of weapon unless in the presence and at the direction of their Master or Mistress.	Gun; Pistol; Sword; Club; Other kind of weapon	Unconstitutional under the Thirteenth and/or Fourteenth Amendments	

<sup>1</sup> In compliance with the Court's Order dated December 15, 2022 (Dkt. 134), Defendant created this survey of statutes, laws, and regulations that Defendant has determined are relevant to this action. Plaintiffs disagree that nearly all of those statutes, laws, and regulations are relevant to the historical analysis required in this case, and in compliance with the Court's December 15 Order, the chart reflects Plaintiffs' position regarding the relevance of each law.

<sup>2</sup> The surveys have been filed in compliance with the Court's Order directing the parties to identify all relevant laws, statutes, and regulations from the time of the Second Amendment to twenty years after adoption of the Fourteenth Amendment. In compliance with that Order and in recognition of the historical inquiry mandated by *Bruen*, the spreadsheets identify hundreds of relevant firearms laws, some of which were drafted well before the Thirteenth Amendment's abolition of slavery and the Fourteenth Amendment's Equal Protection Clause. While our subsequent briefing, as ordered by the Court, will explain in more detail the historical context and relevance of such laws, the Attorney General emphasizes his strong disagreement with racial and other improper discrimination that existed in some such laws, and which stand in stark contrast to California's commonsense firearm laws, which are designed to justly and equitably protect all Californians. The listing of such racist and discriminatory statutes should in no way be construed as an endorsement of such laws by the Attorney General or his counsel in this matter.

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
						to the U.S. Constitution	
6	1686	New Jersey	The Grants, Concessions, and Original Constitutions of The Province of New Jersey 289-90 (1881) (1686)	Prohibited the carrying “privately” of any pocket pistol, skeines, stilettoes, daggers or dirks, or other unusual or unlawful weapons. Punishable by fine of 5 pounds for first conviction, and punishable by imprisonment for 6 months and a fine of 10 pounds.	Pistol; Skeines; Stilettoes; Dagger; Dirk; Other unusual or unlawful weapons		
7	1689	England	English Bill of Rights of 1689, 1 Wm. & Mary ch. 2, § 7	Provided a right for Protestants to have “Arms for their Defense . . . as allowed by law.”	Arms for defense		
8	1750	Massachusetts	1750 Mass. Acts 544, An Act for Preventing and Suppressing of Riots, Routs and Unlawful Assemblies, ch. 17, § 1	Prohibited the carrying of a club or other weapon while unlawfully, riotously, or tumultuously assembling. Punishable by seizing the weapon and a hearing before the court.	Club; Other weapon		
9	1769	England	1 Blackstone ch. 1 (1769)	Recognized the “fifth and last auxiliary right,” which provided that Protestant subjects had the right to “arms for their defence” “such as are allowed by law.”	Arms for defense		
10	1771	New Jersey	1763-1775 N.J. Laws 346, An Act for the Preservation of Deer and Other Game, and to Prevent Trespassing with Guns, ch. 539, § 10	Prohibited the setting of any trap gun intended to discharge by any string, rope, or other contrivance. Punishable by forfeiture of the firearm and fine of 6 pounds.	Trap gun		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
11	1783	Massachusetts – City of Boston	1783 Mass. Acts 37, § 2	Prohibited the possession of any “fire arms,” and among other devices, loaded with any gun powder. Punishable by forfeiture and sale at public auction.	Gunpowder		
12	1784	New York – City of New York City	1784 Laws of N.Y. 627, ch. 28	Prohibited any person to keep any quantity of gun powder exceeding 28 pounds and required storage in separate containers. Punishable by forfeiture and fine.	Gunpowder		
13	1786	Massachusetts	An Act to Prevent Routs, Riots, and Tumultuous assemblies, and the Evil Consequences Thereof, reprinted in Cumberland Gazette (Portland, MA), Nov. 17, 1786, at 1	Prohibited being armed with a club or other weapon while rioting.	Club; Other weapon		
14	1788	Ohio [Territory]	1788-1801 Ohio Laws 20, A Law Respecting Crimes and Punishments . . . , ch. 6	Prohibited the carrying of any “dangerous weapon” that indicates a violent intention while committing a burglary. Punishable by imprisonment for up to 40 years.	Any dangerous weapon		
15	1792	Virginia	Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force . . . , at 187 (1803), §§ 8-9	Prohibited any “negro or mulatto” from possessing or carrying a gun, powder, shot, club, or other weapon.	Gun; Powder; Shot; Club; Other weapon; Ammunition	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	



***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB**  
**Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
16	1797	Delaware	Del. Laws 104, An Act for the Trial of Negroes, ch. 43, § 6	Prohibited “any Negro or Mulatto slave” from carrying guns, swords, pistols, fowling pieces, clubs, or other arms and weapons without the master’s special license.	Gun; Sword; Pistol; Fowling pieces; Club; other arms and weapons	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
17	1798	Kentucky	1798 Ky. Acts 106	Prohibited “negro, mulatto, or Indian” from possessing or carrying a gun, powder, shot, club, or other weapon or ammunition.	Gun; Powder; Shot; Club; Other weapon	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
18	1799	Mississippi [Territory]	1799 Miss. Laws 113, A Law for The Regulation of Slaves	Prohibited any “Negro or mulatto” from carrying gun, powder, shot, club, or other weapon. Also prohibits a “negro or mulatto” from possessing a gun, weapon, or ammunition.	Gun; Powder; Shot; Cub; Other weapon; Ammunition	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
19	1799	New Jersey	Charles Nettleton, Laws of the State of New-Jersey, at 474 (1821), [An Act to Describe, Apprehend and Punish Disorderly Persons (1799)], § 2	Prohibited the carrying of any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to assault any person.”	Pistol; Hanger; Cutlass; Bludgeon; Other offensive weapon		
20	1801	Tennessee	1801 Tenn. Act 260-61	Prohibited the private carrying of “any dirk, large knife, pistol, or any other dangerous weapon, to	Dirk; Large knife; Pistol;		

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				the fear or terror of any person,” unless a surety is posted. Punishable as for “breach of the peace, or riot at common law.”	Other dangerous weapon		
21	1804	Indiana [Territory]	1804 Ind. Acts 108, A Law Entitled a Law Respecting Slaves, § 4	Prohibited a “slave or mulatto” from carrying or possessing a gun, powder, shot, club or other weapon and ammunition.	Gun; Powder; Shot; Club; Other weapon	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
22	1804	Mississippi [Territory]	1804 Miss. Laws 90, An Act Respecting Slaves, § 4	Prohibited a “Slave” from keeping or carrying a gun, powder, shot, club, or other weapon.	Gun; Powder; Shot; Club; Other weapon; Ammunition	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
23	1811	Maryland	The Laws of Maryland, with the Charter, the Bill Of Rights, the Constitution of the State, and Its Alterations, the Declaration of Independence, and the Constitution of the United States, and Its Amendments, at 465 (1811)	Prohibited the carrying of any pistol, hanger, cutlass, bludgeon, or other offensive weapon with the intent to assault a person. Punishable by imprisonment for 3 months to 2 years.	Pistol; Hanger; Cutlass; Bludgeon; Other offensive weapon		
24	1813	Louisiana	1813 La. Acts 172, An Act Against Carrying	Prohibited the carrying of any concealed weapon, including a	Dirk; Dagger;		

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			Concealed Weapons, and Going Armed in Public Places in an Unnecessary Manner, § 1	dirk, dagger, knife, pistol, or any other deadly weapon.	Knife; Pistol; Other deadly weapon		
25	1816	Georgia	Lucius Q.C. Lamar, A Compilation of the Laws of the State of Georgia, Passed by the Legislature since the Year 1810 to the Year 1819, Inclusive. Comprising all the Laws Passed within those Periods, Arranged under Appropriate Heads, with Notes of Reference to those Laws, or Parts of Laws, which are Amended or Repealed to which are Added such Concurred and Approved Resolutions, as are Either of General, Local, or Private Moment. Concluding with a Copious Index to the Laws, a Separate one to the Resolutions, at 599 (1821), Offences Against the Public Peace, (1816) § 19	Prohibited the carrying of any pistol, hanger, cutlass, bludgeon, or other offensive weapon with the intent to assault a person. Punishable by imprisonment with hard labor for a period of time to be determined by a jury.	Picklock; Key; Crow; Jack; Bit or other implement; Pistol; Hanger; Cutlass; Bludgeon; Other offensive weapon		
26	1818	Missouri [Territory]	Organic Laws:-Laws of Missouri Territory, (Alphabetically	Prohibited “slave or mulatto” from carrying a gun, powder, shot, club or other weapon and	Gun; Powder; Shot;	Unconstitutional under the Thirteenth	

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			Arranged):-Spanish Regulations for the Allotment of Lands:- Laws of the United States, for Adjusting Titles to Lands, &c. to Which are Added, a Variety of Forms, Useful to Magistrates, at 374 (1818), Slaves, § 3	from possessing a gun or ammunition.	Club; Other weapon; Ammunition	and/or Fourteenth Amendments to the U.S. Constitution	
27	1821	Maine	1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, chap. 25, § 1	Prohibited any person from possessing any gunpowder, in any quantity, unless permitted by local rules and regulations.	Gunpowder		
28	1835	Arkansas [Territory]	Slaves, in Laws of the Arkansas Territory 521 (J. Steele & J. M'Campbell, Eds., 1835)	Prohibited any "slave or mulatto" from keeping or carrying a gun, powder, shot, club, or other weapon.	Firearm; Powder; Shot; Club; Other weapon	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
29	1836	Massachusetts	Mass. Rev. Stat., ch. 134, § 16 (1836)	Prohibited the carrying of a dirk, dagger, sword, pistol, or other offensive and dangerous weapon without reasonable cause to fear an assault. Punishable by finding sureties for keeping the peace for a term up to 6 months.	Dirk; Dagger; Sword; Pistol; Other offensive and dangerous weapon		
30	1836	Connecticut – Cities of Hartford, New Haven, New	1836 Conn. Acts 105, ch. 1, § 20	Authorizing the local court of common counsel to prohibit and regulate the storage of gun powder.	Gunpowder		

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		London, Norwich, and Middletown					
31	1837	Alabama	1837 Ala. Acts 7, §§ 1, 2	Imposed tax of \$100 on any person selling, giving, or disposing of any Bowie knife or Arkansas toothpick. Failure to pay the tax was subject to penalty of perjury.	Knife	Tax reduced in 1851.	
32	1837	Arkansas	Josiah Gould, A Digest of the Statutes of Arkansas Embracing All Laws of a General and Permanent Character in Force the Close of the Session of the General Assembly of 1856 380 381–82 (1837)	Prohibited the concealed carrying of any pistol, dirk, butcher or large knife, sword cane, unless “upon a journey.”	Pistol; Dirk; Butcher knife; Sword cane		<i>State v. Buzzard</i> , 4 Ark. 18 (1842) (upholding law under the Second Amendment and state constitution); <i>Fife v. State</i> , 31 Ark. 455 (1876)
33	1837	Georgia	Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in November and December 1837, at 90-91 (1838)	Prohibited any merchant, or “any other person or persons whatsoever,” to sell, offer to sell, keep, or have on their person or elsewhere any Bowie knife or “any other kind of knives, manufactured and sold for the purpose of wearing, or carrying the same as arms of offence or defence,” pistols, swords, sword canes, or spears. Exempted	Bowie knife; Other knife manufactured for wearing or carrying for offense or defense; Pistol; Sword; Sword cane; Spear		<i>Nunn v. State</i> , 1 Ga. 243 (1846) (held unconstitutional under Second Amendment).

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				“such pistols as are known as horseman’s pistols” from these restrictions. Punishable by a fine of up to \$100-500 for the first offense and \$500-1,000 for subsequent offenses.			
34	1837	Mississippi	1837 Miss. L. 291-92	Prohibited the use of any rifle, shotgun, sword cane, pistol, dirk, dirk knife, Bowie knife, or any other deadly weapon in a fight in which one of the combatants was killed, and the exhibition of any dirk, dirk knife, Bowie knife, sword, sword cane, or other deadly weapon in a rude or threatening manner that was not in necessary self-defense. Punishable by liability to decedent and a fine of up to \$500 and imprisonment for up to 3 months.	Rifle; Shotgun; Sword cane; Pistol; Dirk; Dirk knife; Bowie knife; Sword; Sword cane; Other deadly weapon		
35	1837	Mississippi – Town of Sharon	1837 Miss. L. 294	Authorized the town of Sharon to enact “the total inhibition of the odious and savage practice” of carrying dirks, Bowie knives, or pistols.	Dirk; Bowie knife; Pistol		
36	1837	Tennessee	1837-38 Tenn. Pub. Acts 200-01, An Act to Suppress the Sale and Use of Bowie Knives and Arkansas Tooth Picks in this State, ch. 137, § 2	Prohibited the carrying of a concealed Bowie knife, Arkansas tooth pick, or other knife or weapon. Punishable by fine of \$200-500 and imprisonment for 3-6 months.	Bowie knife; Arkansas toothpick; Other knife or weapon		<i>Haynes v. Tennessee</i> , 24 Tenn. 120 (1844) (upheld conviction for unlawful

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							carrying of a Bowie knife).
37	1837	Tennessee	1837-1838 Tenn. Pub. Acts 200, An Act to Suppress the Sale and Use of Bowie Knives and Arkansas Tooth Picks in this State, ch. 137, § 1.	Prohibited any merchant from selling a Bowie knife or Arkansas tooth pick. Punishable by fine of \$100-500 and imprisonment for \$1-6 months.	Bowie knife; Arkansas toothpick		
38	1837	Tennessee	1837-1838 Tenn. Pub. Acts 201, An Act to Suppress the Sale and Use of Bowie Knives and Arkansas Tooth Picks in the State, ch. 137, § 4	Prohibited the stabbing or cutting of another person with any knife or weapon known as a “Bowie knife, Arkansas tooth pick, or any knife or weapon that shall in form, shape or size resemble a Bowie knife,” regardless of whether the person dies. Punishable by imprisonment for 3-15 years.	Bowie knife; Arkansas toothpick; Any knife or weapon that resembles a bowie knife		
39	1838	Tennessee	Acts Passed at the First Session of the Twenty-Second General Assembly of the State of Tennessee: 1837-38, at 200-01, ch. 137	Prohibited the sale or transfer of any Bowie knife or knives, Arkansas toothpicks, or “any knife or weapon that shall in form shape or size resemble a Bowie knife or any Arkansas toothpick.”	Bowie knife; Arkansas toothpick; Any similar knife		<i>Aymette v. State</i> , 21 Tenn. (2 Hum.) 154 (1840) (upheld under state constitution).
40	1838	Virginia	Acts of the General Assembly of Virginia, Passed at the Session of 1838, at 76-77, ch. 101 (1838)	Prohibited “habitually or generally” carrying any concealed pistol, dirk, Bowie knife, or any other weapon of like kind.	Pistol; Dirk; Bowie knife; Other similar weapon		
41	1839	Alabama	1839 Ala. Acts 67, § 1	Prohibited the concealed carrying of “any species of fire	Knife; Deadly weapon		<i>State v. Reid</i> , 1 Ala. 612



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				arms, or any bowie knife, Arkansas tooth-pick, or any other knife of the like kind, dirk, or any other deadly weapon.” Punished by fine of \$50-100 and imprisonment not to exceed 3 months.			(1840) (upheld under Alabama Constitution); <i>Whatley v. State</i> , 49 Ala. 355 (1947) (necessity required).
42	1839	Florida [Territory]	John P. Duval, Compilation of the Public Acts of the Legislative Council of the Territory of Florida, Passed Prior to 1840, at 423 (1839), An Act to Prevent any Person in this Territory from Carrying Arms Secretly	Prohibited the concealed carrying of “any dirk, pistol, or other arm, or weapon, except a common pocket-knife.” Punishable by fine of \$50-500 or imprisonment for 1-6 months.	Dirk; Pistol; Other arm or weapon		
43	1839	Mississippi – Town of Emery	1839 Miss. L. 385, ch. 168	Authorized the town of Emery to enact restrictions on the carrying of dirks, Bowie knives, or pistols.	Dirk; Bowie knife; Pistol		
44	1840	Mississippi – Town of Hernando	1840 Miss. L. 181, ch. 111	Authorized the town of Hernando to enact restrictions on the carrying of dirks, Bowie knives, or pistols.	Dirk; Bowie knife; Pistol		
45	1841	Alabama	1841 Ala. Acts 148–49, Of Miscellaneous Offences, ch. 7, § 4	Prohibited the concealed carrying of “a bowie knife, or knife or instrument of the like kind or description, by whatever name called, dirk or any other deadly weapon, pistol or any	Knife; Pistol; Air gun; Other deadly weapon		

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				species of firearms, or air gun,” unless the person is threatened with an attack or is traveling or “setting out on a journey.” Punished by a fine of \$50-100.			
46	1841	Maine	1841 Me. Laws 709, ch. 169, § 16.	Prohibited the carrying of a dirk, dagger, sword, pistol, or other offensive and dangerous weapon without reasonable cause to fear an assault. Upon complaint of any person, the person intending to carry such weapons may be required to find sureties for keeping the peace for up to six months.	Dirk; Dagger; Sword; Pistol; Other offensive and dangerous weapon		
47	1841	Mississippi	1841 Miss. 52, ch. 1	Imposed an annual property tax of \$1 on each Bowie knife.	Bowie knife	Tax reduced in 1850	
48	1842	Louisiana	Henry A. Bullard & Thomas Curry, 1 A New Digest of the Statute Laws of the State of Louisiana, from the Change of Government to the Year 1841 at 252 (E. Johns & Co., New Orleans, 1842)	Prohibited the carrying of “any concealed weapon, such as a dirk, dagger, knife, pistol, or any other deadly weapon.” Punishable by fine of \$20-50.	Dirk; Dagger; Knife; Pistol; Other deadly weapon		
49	1845	Illinois	Mason Brayman, Revised Statutes of the State of Illinois: Adopted by the General Assembly of Said State, at Its Regular Session, Held in the Years A.D. 1844-45: Together with an Appendix	Prohibited the carrying of “any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person. Punishable by fine up to \$100 or imprisonment up to 3 months.	Pistol; Gun; Knife; Dirk; Bludgeon; Other offensive weapon		

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			Containing Acts Passed at the Same and Previous Sessions, Not Incorporated in the Revised Statutes, but Which Remain in Force , at 176 (1845), Criminal Jurisprudence, § 139				
50	1846	North Carolina	1846 N.C. L., ch. 42	Prohibited “any slave” from receiving any sword, dirk, Bowie knife, gun, musket, firearms, or “any other deadly weapons of offense” without written permission.	Sword; Dirk; Bowie knife; Gun; Musket; Firearms; Other deadly weapons of offense	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
51	1847	Maine	The Revised Statutes of the State of Maine, Passed October 22, 1840; To Which are Prefixed the Constitutions of the United States and of the State of Maine, and to Which Are Subjoined the Other Public Laws of 1840 and 1841, with an Appendix, at 709 (1847), Justices of the Peace, § 16	Prohibited the carrying of a dirk, dagger, sword, pistol, or other offensive and dangerous weapon without reasonable cause to fear an assault. Upon complaint of any person, the person intending to carry such weapons may be required to find sureties for keeping the peace for up to one year.	Dirk; Dagger; Sword; Pistol; Other offensive and dangerous weapon		
52	1849	California – City of San Francisco	1849 Cal. Stat. 245, An Act to Incorporate the City of San Francisco, § 127	Prohibited the carrying, with intent to assault any person, any pistol, gun, knife, dirk, bludgeon, or other offensive	Pistol; Gun; Knife; Dirk;		

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				weapon with the intent to assault another person.. Punished by fine of up to \$100 and imprisonment for up to 3 months.	Bludgeon; Other offensive weapon		
53	1850	Mississippi	1850 Miss. 43, ch. 1	Imposed an annual property tax of 50 cents on each Bowie knife.	Bowie knife	Tax increased to \$1 in 1854	
54	1851	Alabama	1851-52 Ala. 3, ch. 1	Tax of \$2 on “every bowie knife or revolving pistol.”	Bowie knife; Pistol	Additional weapons added in 1867.	
55	1851	Illinois – City of Chicago	Ordinances of the City of Chicago, Ill., ch. 16, § 1	Prohibiting the keeping, sale, or giving away of gun powder or gun cotton “in any quantity” absent written permission of the authorities. Punishable by a fine of \$25 per offense.	Gunpowder		
56	1851	Pennsylvania – City of Philadelphia	1851 Pa. Laws 382, An Act Authorizing Francis Patrick Kenrick, Bishop of Philadelphia, to Convey Certain Real Estate in the Borough of York, and a Supplement to the Charter of Said Borough, § 4	Prohibited the willful and malicious carrying of any pistol, gun, dirk, knife, slungshot, or deadly weapon. Punishable by imprisonment for 6 months to 1 year and security for future good behavior.	Pistol; Gun; Dirk; Slungshot; Deadly weapon		
57	1853	California	S. Garfielde, Compiled Laws of the State of California: Containing All the Acts of the Legislature of a Public and General Nature, Now in Force,	Prohibited carrying of pistol, gun, knife, dirk, bludgeon, or other offensive weapon with intent to assault. Punishable by fine of up to \$100 or imprisonment for up to 3 months.	Pistol; Gun; Knife; Dirk; Bludgeon; Other offensive weapon		

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			Passed at the Sessions of 1850-51-52-53, § 127				
58	1853	New Mexico [Territory]	1853 N.M. Laws 406, An Act Prohibiting the Carrying of Weapons Concealed or Otherwise, § 25	Prohibited the carrying of a concealed pistol, Bowie knife, cuchillo de cinto (belt buckle knife), Arkansas toothpick, Spanish dagger, slungshot, or any other deadly weapon.	Pistol; Bowie knife; Cuchillo de cinto (belt buckle knife); Arkansas toothpick; Spanish dagger; Slungshot; Other deadly weapon	<i>See also</i> 1859 N.M. L. 94-96 (same).	
59	1854	Mississippi	1854 Miss. 50, ch. 1	Imposed an annual property tax of \$1 on each Bowie knife, Arkansas toothpick, sword cane, and dueling or pocket pistol.	Bowie knife; Arkansas toothpick; Sword cane; Dueling or pocket pistol	Amended in 1856 to exclude pocket pistols from the tax	
60	1854	Washington [Territory]	1854 Wash. Sess. Law 80, An Act Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. 2, § 30	Prohibited exhibiting, in a rude, angry, or threatening manner, a pistol, Bowie knife, or other dangerous weapon. Punishable by imprisonment up to 1 year and a fine up to \$500.	Pistol; Bowie knife; Other dangerous weapon		
61	1855	California	1855 Cal. L. 152-53, ch. 127	Provided that a person who killed another in a duel with “a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword or other dangerous weapon” would pay the decedent’s debts and be liable to	Rifle; Shotgun; Pistol; Bowie knife; Dirk; Small-sword; Back-sword;		

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				the decedent's family for liquidated damages.	Other dangerous weapon		
62	1855	Indiana	1855 Ind. Acts 153, An Act to Provide for the Punishment of Persons Interfering with Trains or Railroads, ch. 79, § 1	Prohibited the carrying of any dirk, pistol, Bowie knife, dagger, sword in cane, or any other dangerous or deadly weapon with the intent of injuring another person. Exempted any person who was a "traveler." Punishable by fine up to \$500.	Dirk; Pistol; Bowie knife; Dagger; Sword cane; Other dangerous or deadly weapon	<i>See also</i> 1859 Ind. L. 129, ch. 78 (same); 1881 Ind. L. 191, ch. 37.	
63	1855	Louisiana	1855 La. L. 148, ch. 120	Prohibited the concealed carrying of "pistols, bowie knife, dirk, or any other dangerous weapon."	Pistol; Bowie knife; Dirk; Other dangerous weapon		
64	1856	Mississippi	1856-1857 Miss. L. 36, ch. 1	Imposed an annual property tax of \$1 on each Bowie knife, dirk knife, or sword cane.	Bowie knife; Dirk knife; Sword cane	Modified in 1861 to preclude collection of the tax during the Civil War (1861-1862 Miss. L. 134, ch. 125)	
65	1856	Tennessee	1855-56 Tenn. L. 92, ch. 81	Prohibited the sale or transfer of any pistol, Bowie knife, dirk, Arkansas toothpick, or hunter's knife to a minor. Excepted the transfer of a gun for hunting.	Pistol; Bowie knife; Dirk; Arkansas toothpick; Hunter's knife		

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66	1856	Texas	Tex. Penal Code arts. 611-12 (enacted Aug. 28, 1856)	Provided that the use of a Bowie knife or a dagger in manslaughter is to be deemed murder.	Bowie knife; Dagger		<i>Cockrum v. State</i> , 24 Tex. 394 (1859) (upheld under Second Amendment and Texas Constitution).
67	1858	Minnesota – City of St. Paul	Ordinances of the City of St. Paul, Minn., ch. 21, § 1	Prohibited the keeping, sale, or giving away of gun powder or gun cotton “in any quantity” absent payment of \$5 to the City Treasurer and written permission of the authorities. Authorized any person to “keep for his own use” no more than 1 pound of gun powder or gun cotton at any one time. Punishable by a fine not to exceed \$50 per offense.	Gunpowder		
68	1858	Nebraska [Territory]	1858 Neb. Laws 69, An Act to Adopt and Establish a Criminal code for the Territory of Nebraska, § 135	Prohibited the carrying of a pistol, gun, knife, dirk, bludgeon or other offensive weapon with the intent to assault a person. Punishable by fine up to \$100.	Pistol; Gun; Knife; Dirk; Bludgeon; Other offensive weapon		
69	1859	Kentucky – Town of Harrodsburg	1859 Ky. Acts 245, An Act to Amend An Act Entitled “An Act to Reduce to One the Several Acts in Relation to the Town of Harrodsburg, § 23	Prohibited the selling, giving, or loaning of a concealed pistol, dirk, Bowie knife, brass knuckles, slungshot, colt, cane-gun, or other deadly weapon to a “minor, slave, or free negro.” Punishable by fine of \$50.	Pistol; Dirk; Bowie knife; Brass knuckles; Slungshot; Colt; Cane-gun;	Unconstitutional under the Thirteenth and/or Fourteenth Amendments	



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					Other deadly weapon	to the U.S. Constitution	
70	1859	Ohio	1859 Ohio Laws 56, An Act to Prohibit the Carrying or Wearing of Concealed Weapons, § 1	Prohibited the concealed carrying of any pistol, Bowie knife, or any other “dangerous weapon.” Punishable by fine of up to \$200 or imprisonment of up to 30 days for the first offense, and a fine of up to \$500 or imprisonment for up to 3 months for the second offense.	Pistol; Bowie knife; Other dangerous weapon		
71	1859	Washington [Territory]	1859 Wash. Sess. Laws 109, An Act Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. 2, § 30	Prohibited exhibiting, in a rude, angry, or threatening manner, a pistol, Bowie knife, or other dangerous weapon. Punishable by imprisonment up to 1 year and a fine up to \$500.	Pistol; Bowie knife; Other dangerous weapon		
72	1860	Georgia	1860 Ga. Laws 56, An Act to add an additional Section to the 13th Division of the Penal Code, making it penal to sell to or furnish slaves or free persons of color, with weapons of offence and defence; and for other purposes therein mentioned, § 1.	Prohibited the sale or furnishing of any gun, pistol, Bowie knife, slungshot, sword cane, or other weapon to a “slave or free person of color.” Punishable by fine up to \$500 and imprisonment up to 6 months.	Gun; Pistol; Bowie knife; Slungshot; Sword cane; Other weapon	Unconstitutional under the Thirteenth and/or Fourteenth Amendments to the U.S. Constitution	
73	1861	California	William H. R. Wood, Digest of the Laws of California: Containing All Laws of a General Character Which were in	Prohibited the display of any dirk, dirk-knife, Bowie knife, sword, sword cane, pistol, gun, or other deadly weapon in a threatening manner, or use of	Dirk; Bowie knife; Sword; Sword cane; Pistol;		

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			Force on the First Day of January, 1858; Also, the Declaration of Independence, Constitution of the United States, Articles of Confederation, Kentucky and Virginia Resolutions of 1798-99, Acts of Congress Relative to Public Lands and Pre-Emptions. Together with Judicial Decisions, Both of the Supreme Court of the United States and of California, to Which are Also Appended Numerous Forms for Obtaining Pre-Emption and Bounty Lands, Etc., at 334 (1861)	such weapon in a fight. Punishable by a fine of \$100-500 or imprisonment for 1-6 months.	Gun; Other deadly weapon		
74	1861	Nevada [Territory]	1861 Nev. L. 61	Provided that the killing of another in a duel with a rifle, shotgun, pistol, Bowie knife, dirk, small-sword, back-sword, or other “dangerous weapon” in the killing of another in a duel is to be deemed murder.	Rifle; Shotgun; Pistol; Bowie knife; Dirk; Small-sword; Back-sword; Other dangerous weapon		
75	1862	Colorado [Territory]	1862 Colo. Sess. Laws 56, § 1	Prohibited the concealed carrying in any city, town, or village any pistol, Bowie knife,	Pistol; Bowie knife; Dagger;		

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				dagger, or other deadly weapon. Punished by fine of \$5-35.	Other deadly weapon		
76	1863	Kansas – City of Leavenworth	C. B. Pierce, Charter and Ordinances of the City of Leavenworth, with an Appendix, at 45 (1863), An Ordinance Relating to Misdemeanors, § 23	Prohibited the carrying of any concealed “pistol, dirk, bowie knife, revolver, slung shot, billy, brass, lead or iron knuckles, or any other deadly weapon within this city.” Punishable by a fine of \$3-100.	Pistol; Dirk; Bowie knife; Revolver; Slungshot; Billy; Brass; lead or iron knuckles; Other deadly weapon		
77	1863	Tennessee – City of Memphis	William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, Together with the Acts of the Legislature Relating to the City, with an Appendix, at 190 (1863), Offences Affecting Public Safety: Carrying Concealed Weapons, § 3	Prohibited the carrying of a concealed pistol, Bowie knife, dirk, or any other deadly weapon. Punishable by fine of \$10-50.	Pistol; Bowie knife; Dirk; Other deadly weapon		
78	1864	California	Theodore Henry Hittell, The General Laws of the State of California, from 1850 to 1864, Inclusive: Being a Compilation of All Acts of a General Nature Now in Force, with Full References to Repealed Acts, Special and Local Legislation, and Statutory Constructions of	Prohibited the concealed carrying of any dirk, pistol, sword cane, slungshot, or “other dangerous or deadly weapon.” Exempted any peace officer or officer acting under the law of the United States. Punishable by imprisonment for 30-90 days or fine of \$20-200.	Dirk; Pistol; Sword cane; Slungshot; Other deadly or dangerous weapon	Repealed 1869-70 Cal. Sess. Laws, ch. 63 (provided that pending cases be heard and tried as if not repealed)	

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			the Supreme Court. To Which are Prefixed the Declaration of Independence, Constitution of the United States, Treaty of Guadalupe Hidalgo, Proclamations to the People of California, Constitution of the State of California, Act of Admission, and United States Naturalization Laws, with Notes of California Decisions Thereon, at 261, § 1 (1868)				
79	1864	Montana [Territory]	1864 Mont. Laws 355, An Act to Prevent the Carrying of Concealed Deadly Weapons in the Cities and Towns of This Territory, § 1	Prohibited the carrying of a concealed “any pistol, bowie-knife, dagger, or other deadly weapon” within any town or village in the territory. Punishable by fine of \$25-100.	Pistol; Bowie knife; Dagger; Other deadly weapon		
80	1865	Utah [Territory]	An Act in relation to Crimes and Punishment, Ch. XXII, Title VII, Sec. 102, in Acts, Resolutions and Memorials Passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah 59 (Henry McEwan 1866), § 102	Prohibited the “set[ting] of any gun.” Punishable by imprisonment of up to 1 year or a fine of up to \$500.	Trap gun		

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81	1866	New York	Montgomery Hunt Throop, The Revised Statutes of the State of New York; As Altered by Subsequent Legislation; Together with the Other Statutory Provisions of a General and Permanent Nature Now in Force, Passed from the Year 1778 to the Close of the Session of the Legislature of 1881, Arranged in Connection with the Same or kindred Subjects in the Revised Statutes; To Which are Added References to Judicial Decisions upon the Provisions Contained in the Text, Explanatory Notes, and a Full and Complete Index, at 2512 (Vol. 3, 1882), An Act to Prevent the Furtive Possession and use of slungshot and other dangerous weapons, ch. 716, § 1	Prohibited using, attempting to use, concealing, or possessing a slungshot, billy, sandclub or metal knuckles, and any dirk or dagger, or sword cane or air-gun. Punishable by imprisonment for up to 1 year and/or a fine up to \$500.	Slungshot; Billy; Sandclub; Metal knuckles; Dirk; Dagger; Sword cane; Air gun		
82	1866	North Carolina	1866 N.C. L. ch. 21, at 33-34, § 11	Imposed a \$1 tax on every dirk, Bowie knife, pistol, sword cane, dirk cane, and rifle cane used or worn during the year.	Dirk; Bowie knife; Pistol; Sword cane;		

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					Dirk cane; Rifle cane		
83	1867	Alabama	1867 Ala. Rev. Code 169	Tax of \$2 on pistols or revolvers in the possession of private persons, excluding dealers, and a tax of \$3 on “all bowie knives, or knives of the like description.” Non-payment was punishable by seizure and, unless payment was made within 10 days with a penalty of an additional 50%, subject to sale by public auction.	Pistol; Bowie knife		
84	1867	Colorado [Territory]	1867 Colo. Sess. Laws 229, § 149	Prohibited the concealed carrying of any pistol, Bowie knife, dagger, or other deadly weapon within any city, town, or village in the territory. Punishable by fine of \$5-35. Exempted sheriffs, constables, and police officers when performing their official duties.	Pistol; Bowie knife; Dagger; Other deadly weapon		
85	1867	Tennessee – City of Memphis	William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, from 1826 to 1867, Inclusive, Together with the Acts of the Legislature Relating to the City, with an Appendix, at 44 (1867), Police Regulations of the State, Offences Against Public	Prohibited the carrying of a concealed Bowie knife, Arkansas tooth pick, dirk, sword cane, Spanish stiletto, belt or pocket pistol, or other knife or weapon. Also prohibited selling such a weapon or using such a weapon to threaten people.	Bowie knife; Arkansas toothpick; Dirk; Sword cane; Spanish stiletto; Belt; Pocket pistol; Other knife or weapon		

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			Peace, §§ 4746, 4747, 4753, 4757				
86	1867	Tennessee – City of Memphis	William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, from 1826 to 1867, Inclusive, Together with the Acts of the Legislature Relating to the City, with an Appendix, at 50 (1867), Police Regulations of the State. Selling Liquors or Weapons to Minors, § 4864	Prohibited selling, loaning, or giving to a minor a pistol, Bowie knife, dirk, Arkansas tooth-pick, hunter's knife, or like dangerous weapon, except a gun for hunting or self defense in traveling. Punishable by fine of minimum \$25 and imprisonment.	Pistol; Bowie knife; Dirk; Arkansas toothpick; Hunter's knife; Dangerous weapon		
87	1868	Alabama	Wade Keyes, The Code of Alabama, 1876, ch. 3, § 4111 (Act of Aug. 5, 1868, at 1)	Prohibited the carrying of any rifle or "shot-gun walking cane." Punishable by fine of \$500-1000 and imprisonment of no less than 2 years.	Rifle; Shotgun walking cane		
88	1868	Florida	Fla. Act of Aug. 8, 1868, as codified in Fla. Rev. Stat., tit. 2, pt. 5 (1892), at 2425	Prohibited the manufacture or sale of slungshots or metallic knuckles. Punishable by imprisonment for up to 6 months or a fine up to \$100.	Slungshot; Metallic knuckles		
89	1868	Florida	1868 Fla. Laws 2538, Persons Engaged in Criminal Offence, Having Weapons, ch. 7, § 10	Prohibited the carrying of a slungshot, metallic knuckles, billies, firearms or other dangerous weapon if arrested for committing a criminal offence or disturbance of the peace. Punishable by imprisonment up to 3 months or a fine up to \$100.	Slungshot; Metallic knuckles; Billy; Firearms; Other dangerous weapon		



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90	1868	Florida	James F McClellan, A Digest of the Laws of the State of Florida: From the Year One Thousand Eight Hundred and Twenty-Two, to the Eleventh Day of March, One Thousand Eight Hundred and Eighty-One, Inclusive, at 403 (1881), Offences Against Public Peace, § 13 (Fla. Act of Aug. 6, 1868, ch. 1637)	Prohibited the carrying “about or on their person” any dirk, pistol or other arm or weapon, except a “common pocket knife.” Punishable by fine up to \$100 or imprisonment up to 6 months.	Dirk; Pistol; Other arm or weapon		
91	1869	Tennessee	1869-70 Tenn. L. 23-24, ch. 22	Prohibited the carrying of any “pistol, dirk, bowie-knife, Arkansas tooth-pick,” any weapon resembling a bowie knife or Arkansas toothpick, “or other deadly or dangerous weapon” while “attending any election” or at “any fair, race course, or public assembly of the people.”	Pistol; Dirk; Bowie knife; Arkansas toothpick; Other “deadly or dangerous weapon”		<i>Andrews v. State</i> , 50 Tenn. 165 (1871) (upheld under state constitution)
92	1869	Washington [Territory]	1869 Wash. Sess. Laws 203-04, An Act Relative to Crimes and Punishments, and Proceedings in Criminal Cases, ch. 2, § 32	Prohibited exhibiting, in a rude, angry, or threatening manner, a pistol, Bowie knife, or other dangerous weapon. Punishable by imprisonment up to 1 year and a fine up to \$500.	Pistol; Bowie knife; Other dangerous weapon		
93	1870	Georgia	1870 Ga. L. 421, ch. 285	Prohibited the open or concealed carry of “any dirk, bowie-knife, pistol or revolver, or any kind of deadly weapon” at “any court of	Dirk; Bowie knife; Pistol; Revolver;	Law enforcement exception added in	<i>Hill v. State</i> , 53 Ga. 472 (1874) (upheld

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				justice, or any general election ground or precinct, or any other public gathering,” except for militia musters.	Any kind of deadly weapon	1879. <i>See</i> 1879 Ga. L. 64, ch. 266	under state constitution)
94	1870	Louisiana	1870 La. Acts 159–60, An Act to Regulate the Conduct and to Maintain the Freedom of Party Election . . . , § 73	Prohibited the carrying of a concealed or open gun, pistol, Bowie knife or other dangerous weapon on an election day during the hours the polls are open or during registration. Punishable by fine of minimum \$100 and imprisonment of minimum 1 month.	Gun; Pistol; Bowie knife; Other dangerous weapon		
95	1870	New York	“The Man Trap,” The Buffalo Commercial, Nov. 1, 1870	Referenced prohibition on the use of “infernal machines.”	Trap gun; Infernal machine		
96	1871	Arkansas – City of Little Rock	George Eugene Dodge, A Digest of the Laws and Ordinances of the City of Little Rock, with the Constitution of State of Arkansas, General Incorporation Laws, and All Acts of the General Assembly Relating to the City 230-31 (1871)	Prohibited carrying of a pistol, revolver, Bowie knife, dirk, rifle, shot gun, slungshot, colt, or metal knuckles while engaged in a breach of the peace. Punishable by a fine of \$25-500.	Pistol; Revolver; Bowie knife; Dirk; Rifle; Shotgun; Slungshot; Colt; Metal knuckles		
97	1871	District of Columbia	An Act to Prevent the Carrying of Concealed Weapons, Aug. 10, 1871, reprinted in Laws of the District of Columbia: 1871-1872, Part II, 33 (1872) (Dist. of Col., An	Prohibited the carrying or having concealed “any deadly or dangerous weapons, such as daggers, air-guns, pistols, Bowie knives, dirk-knives, or dirks, razors, razor-blades, sword-canes, slungshots, or brass or	Dangerous weapon; Dagger; Air-guns; Pistols; Bowie knife; Dirk;		

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			Act to Prevent the Carrying of Concealed Weapons, 1871, ch. XXV)	other metal knuckles.” Punishable by forfeiture of the weapon and a fine of \$20-50.	Razor; Sword-cane; Slungshot; Metal knuckles		
98	1871	Mississippi	1871 Miss. L. 819-20, ch. 33	Imposed property tax on pistols, dirks, Bowie knives, and sword canes.	Pistol; Dirk; Bowie knife; Sword cane	<i>See also</i> 1876 Miss. L. 131, 134, ch. 103; 1878 Miss. L. 27, 29, ch. 3; 1880 Miss. L. 21, ch. 6; 1892 Miss L. 194, ch. 74; 1894 Miss L. 27, ch. 32	
991	1871	Missouri – City of St. Louis	Everett Wilson Pattison, The Revised Ordinance of the City of St. Louis, Together with the Constitution of the United States, and of the State of Missouri; the Charter of the City; and a Digest of the Acts of the General Assembly, Relating to the City, at 491-92 (1871), Ordinances of the City of St. Louis, Misdemeanors, §§ 9-10.	Prohibited the carrying of a concealed pistol, or revolver, colt, billy, slungshot, cross knuckles, or knuckles of lead, brass or other metal, Bowie knife, razor, dirk knife, dirk, dagger, or any knife resembling a Bowie knife, or any other dangerous or deadly weapon without written permission from the Mayor. Punishable by fine of \$10-500.	Pistol; Revolver; Colt; Billy; Slungshot; Cross knuckles; Metal knuckles; Bowie knife; Razor; Dirk; Dagger; Any knife resembling a bowie knife; Other dangerous or deadly weapon		

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100	1871	Tennessee	James H. Shankland Public Statutes of the State of Tennessee, since the Year 1858. Being in the Nature of a Supplement to the Code, at 108 (Nashville, 1871)	Prohibited the carrying of a pistol, dirk, Bowie knife, Arkansas tooth pick, or other weapon in the shape of those weapons, to an election site. Punishable by fine of minimum \$50 and imprisonment at the discretion of the court.	Pistol; Dirk; Bowie knife; Arkansas toothpick		
101	1871	Texas	1871 Tex. Laws 25, An Act to Regulate the Keeping and Bearing of Deadly Weapons. § 1	Prohibited the carrying of a concealed pistol, dirk, dagger, slungshot, sword cane, spear, brass knuckles, Bowie knife, or any other kind of knife used for offense or defense, unless carried openly for self-defense. Punishable by fine of \$20-100, forfeiture of the weapon, and for subsequent offenses, imprisonment up to 60 days.	Pistol; Dirk; Dagger; Slungshot; Sword cane; Spear; Metal knuckles; Bowie knife; Any other kind of knife used for offense or defense		<i>English v. State</i> , 35 Tex. 473 (1872) (upheld as constitutional under Second Amendment and Texas Constitution); <i>State v. Duke</i> , 42 Tex. 455 (1875) (upheld as constitutional under Texas Constitution)
102	1871	Texas	Tex. Act of Apr. 12, 1871, as codified in Tex. Penal Code (1879). Art. 163.	Prohibited the carrying of a concealed or open gun, pistol, Bowie knife, or other dangerous weapon within a half mile of a polling site on an election day. Also prohibited generally carrying a pistol, dirk, dagger, slungshot, sword cane, spear, brass knuckles, Bowie knife, or	Pistol; Dirk; Dagger; Slungshot; Sword cane; Spear; Brass-knuckles; Bowie knife;		

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				other kind of knife used for offense or defense. Punishable by fine and forfeiture of the weapon.	Other dangerous weapon; Other knife used for offense or defense		
103	1872	Maryland – City of Annapolis	1872 Md. Laws 57, An Act to Add an Additional Section to Article Two of the Code of Public Local Laws, Entitled “Anne Arundel County,” Sub-title “Annapolis,” to Prevent the Carrying of Concealed Weapons in Said City, § 246	Prohibited the carrying of a concealed pistol, dirk-knife, Bowie knife, slingshot, billy, razor, brass, iron or other metal knuckles, or any other deadly weapon. Punishable by a fine of \$3-10.	Pistol; Dirk; Bowie knife; Slingshot; Billy; Razor; Brass; Metal knuckles; Other deadly weapon		
104	1872	Nebraska – City of Nebraska	Gilbert B. Colfield, Laws, Ordinances and Rules of Nebraska City, Otoe County, Nebraska, at 36 (1872), Ordinance No. 7, An Ordinance Prohibiting the Carrying of Fire Arms and Concealed Weapons, § 1	Prohibited the carrying openly or concealed of a musket, rifle, shot gun, pistol, sabre, sword, Bowie knife, dirk, sword cane, billy slungshot, brass or other metallic knuckles, or any other dangerous or deadly weapons.	Musket; Rifle; Shot gun; Pistol; Sabre; Sword; Bowie knife; Dirk; Sword cane; Billy; Slungshot; Metal knuckles; Other dangerous or		

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					deadly weapons		
105	1873	Alabama	Wade Keyes, The Code of Alabama, 1876, ch. 3, § 4110 (Act of Apr. 8, 1873, p. 130)	Prohibited the concealed carrying of any brass knuckles, slungshots, or “other weapon of like kind or description.” Punishable by a fine of \$20-200 and imprisonment or term of hard labor not to exceed 6 months.	Metal knuckles; Slungshot		<i>State v. Reid</i> , 1 Ala. 612 (1840) (upheld under Alabama Constitution); <i>Whitley v. State</i> , 49 Ala. 355 (1947) (necessity required).
106	1873	Georgia	R. H. Clark, The Code of the State of Georgia (1873) § 4528	Prohibited the carrying of any dirk, Bowie knife, pistol, or other deadly weapon to a court, election site, precinct, place of worship, or other public gathering site. Punishable by fine of \$20-50 or imprisonment for 10-20 days.	Dirk; Bowie knife; Pistol; Any kind of deadly weapon		
107	1873	Massachusetts	1850 Mass. Gen. Law, ch. 194, §§ 1, 2, as codified in Mass. Gen. Stat., ch. 164 (1873) § 10	Prohibited the carrying of a slungshot, metallic knuckles, bills, or other dangerous weapon if arrested pursuant to a warrant or while committing a crime. Punishable by fine.	Slungshot; Metallic knuckles; Billy; Other dangerous weapon		
108	1873	Massachusetts	1850 Mass. Gen. Law, ch. 194, §§ 1, 2 as codified in Mass. Gen. Stat., ch. 164 (1873) § 11	Prohibited manufacturing or selling a slungshot or metallic knuckles. Punishable by fine up	Slungshot; Metallic knuckles		

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				to \$50 or imprisonment up to 6 months.			
109	1873	Minnesota	The Statutes at Large of the State of Minnesota: Comprising the General Statutes of 1866 as Amended by Subsequent Legislation to the Close of the Session of 1873: Together with All Laws of a General Nature in Force, March 7, A.D. 1873 with References to Judicial Decisions of the State of Minnesota, and of Other States Whose Statutes are Similar to Which are Prefixed the Constitution of the United States, the Organic Act, the Act Authorizing a State Government, and the Constitution of the State of Minnesota, at 993 (Vol. 2, 1873), Of Crimes and Their Punishment, Setting Spring Guns Unlawful, § 64-65	Prohibited the setting of any spring or trap gun. Punished by imprisonment for at least 6 months or a fine of up to \$500 if no injury results; imprisonment for up to 5 years if non-fatal injury results; and imprisonment for 10-15 years if death results.	Spring gun; Trap gun		
110	1873	Nevada	Bonnifield, The Compiled Laws of the State of Nevada. Embracing Statutes of 1861 to 1873,	Prohibited dueling and killing a person with a rifle, shotgun, pistol, Bowie knife, dirk, small	Rifle; Shotgun; Pistol; Bowie knife;		



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			Inclusive, at 563 (Vol. 1, 1873), Of Crimes and Punishments, §§ 35-36	sword, backsword, or other dangerous weapon.	Dirk; Small sword; Back sword; Other dangerous weapon		
111	1873	Tennessee	Seymour Dwight Thompson, A Compilation of the Statute Laws of the State of Tennessee, of a General and Permanent Nature, Compiled on the Basis of the Code of Tennessee, With Notes and References, Including Acts of Session of 1870-1871, at 125 (Vol. 2, 1873), Offences Against Public Policy and Economy, § 4864	Prohibited selling, loaning, or giving to a minor a pistol, Bowie knife, dirk, Arkansas tooth-pick, hunter's knife, or like dangerous weapon, except a gun for hunting or self defense in traveling. Punishable by fine of minimum \$25 and imprisonment for a term determined by the court.	Pistol; Bowie knife; Dirk; Arkansas toothpick; Hunter's knife; Dangerous weapon		
112	1874	Alabama	1874 Ala. L. 41, ch. 1	Imposed \$25 occupational tax on dealers of pistols, Bowie knives, and dirk knives.	Pistol; Bowie knife; Dirk	Increased tax to \$50 in 1875-76.	
113	1874	Illinois	Harvey Bostwick Hurd, The Revised Statutes of the State of Illinois. A. D. 1874. Comprising the Revised Acts of 1871-72 and 1873-74, Together with All Other General Statutes of the State, in Force on the First Day of July, 1874, at 360 (1874),	Prohibited the carrying a concealed weapon, including a pistol, knife, slungshot, brass, steel, or iron knuckles, or other deadly weapon while disturbing the peace. Punishable by fine up to \$100.	Pistol; Knife; Slungshot; Other deadly weapon		

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			Disorderly Conduct: Disturbing the Peace, § 56				
114	1874	New Jersey – City of Jersey City	Ordinances of Jersey City, Passed by the Board of Aldermen since May 1, 1871, under the Act Entitled “An Act to Re-organize the Local Government of Jersey City,” Passed March 31, 1871, and the Supplements Thereto, at 41 (1874), An Ordinance to Prevent the Carrying of Loaded or Concealed Weapons within the Limits of Jersey City. The Mayor and Aldermen of Jersey City do ordain as follows: §§ 1-2	Prohibited the carrying of a concealed slungshot, billy, sandclub or metal knuckles, and any dirk or dagger (not contained as a blade of a pocket-knife), and loaded pistol or other dangerous weapon, including a sword in a cane, or air-gun. punishable by confiscation of the weapon and a fine of up to \$20. Exempted policemen of Jersey City.	Slungshot; Billy; Sandclub; Metal knuckles; Dirk; Dagger; Pistol; Other dangerous weapon; Sword cane; Air gun		
115	1874	Virginia	1874 Va. L. 239, ch. 239	Included the value of all “rifles, muskets, and other fire-arms, bowie-knives, dirks, and all weapons of a similar kind” in list of taxable personal property.	Rifle; Musket; Other firearm; Bowie knife; Dirk		
116	1875	Alabama	1875-1876 Ala. L. 82, ch. 1	Imposed \$50 occupational tax on dealers of pistols, Bowie knives, and dirk knives.	Pistol; Bowie knife; Dirk	Added pistol cartridges in 1886 and increased the tax to \$300 in 1887.	

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117	1875	Alabama	1875-1876 Ala. L. 46, ch. 2	Imposed tax rate of 0.75% of the value of any pistols, guns, dirks, and Bowie knives.	Pistols; Guns; Dirks; Bowie knives	Tax rate reduced to 55 cents in 1882, with additional weapons added.	
118	1875	Arkansas	Act of Feb. 16, 1875, 1874-75 Ark. Acts 156, § 1	Prohibited the carrying in public of any “pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person.” Punishable by a fine of \$25-100.	Pistol; Dirk; Butcher knife; Bowie knife; Sword cane; Metal knuckles		<i>Wilson v. State</i> , 33 Ark. 557 (1878) (held unconstitutional).
119	1875	Idaho [Territory]	Crimes and Punishments, in Compiled and Revised Laws of the Territory of Idaho 354 (M. Kelly, Territorial Printer 1875), § 133.	Prohibited the carrying of “any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person.” Punishable by imprisonment for up to 3 months or a fine up to \$100.	Pick-lock; Crow-key; Bit; Other instrument or tool; Pistol; Knife; Dirk; Bludgeon; Other offensive weapon		
120	1875	Indiana	1875 Ind. Acts 62, An Act Defining Certain Misdemeanors, and Prescribing Penalties Therefore, § 1	Prohibited the drawing or threatening to use a pistol, dirk, knife, slungshot, or any other deadly or dangerous weapon. Punishable by fine of \$1-500, and potentially imprisonment up to 6 months.	Pistol; Dirk; Knife; Slungshot; Other deadly or dangerous weapon		

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121	1875	Michigan	1875 Mich. Pub. Acts 136, An Act To Prevent The Setting Of Guns And Other Dangerous Devices, § 1	Prohibited the setting of any spring or trap gun.	Spring gun; Trap gun		
122	1876	Alabama	1876-77 Ala. Code 882, § 4109	Prohibited the carrying of a Bowie knife, pistol, or air gun, or any other weapon of “like kind or description,” unless threatened with or having good cause to fear an attack or while traveling or setting out on a journey. Punishable by a fine of \$50-300 and imprisonment or hard labor for no more than 6 months.	Bowie knife; Pistol; Air gun; Other similar weapon		<i>State v. Reid</i> , 1 Ala. 612 (1840) (upheld under Alabama Constitution); <i>Whitley v. State</i> , 49 Ala. 355 (1947) (necessity required).
123	1876	Colorado	1876 Colo. Sess. Laws 304, § 154	Prohibited the carrying with intent to assault another any pistol, gun, knife, dirk, bludgeon, or other offensive weapon.	Pistol; Gun; Knife; Dirk; Bludgeon; Other offensive weapon		
124	1876	Georgia	1876 Ga. L. 112, ch. 128	Prohibited the transfer of any pistol, dirk, Bowie knife, or sword cane to a minor.	Pistol; Dirk; Bowie knife; Sword cane		
125	1876	Illinois – Village of Hyde Park	Consider H. Willett, Laws and Ordinances Governing the Village of Hyde Park [Illinois] Together with Its Charter and General Laws	Prohibited the carrying a concealed pistol, revolver, slungshot, knuckles, Bowie knife, dirk knife, dirk, dagger, or any other dangerous or deadly	Pistol; Revolver; Slungshot; Knuckles; Bowie knife;		

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			Affecting Municipal Corporations; Special Ordinances and Charters under Which Corporations Have Vested Rights in the Village. Also, Summary of Decisions of the Supreme Court Relating to Municipal Corporations, Taxation and Assessments, at 64 (1876), Misdemeanors, § 39	weapon without written permission from the Captain of Police. Exempted peace officers.	Dirk; Dagger; Other dangerous or deadly weapon		
126	1876	Wyoming [Territory]	Wyo. Comp. Laws (1876) ch. 35, § 127, as codified in Wyo. Rev. Stat., Crimes (1887), Having possession of offensive weapons, § 1027	Prohibited the carrying of a pistol, knife, dirk, bludgeon, or other offensive weapon with the intent to assault a person. Punishable by fine up to \$500 or imprisonment up to 6 months.	Pistol; Knife; Dirk; Bludgeon; Other offensive weapon		
127	1877	Alabama	Wade Keyes, The Code of Alabama, 1876, ch. 6, § 4230	Prohibited the sale, giving, or lending of any pistol, Bowie knife, or “like knife” to any boy under the age of 18.	Pistol; Bowie knife		<i>Coleman v. State</i> , 32 Ala. 581 (1858) (affirming conviction of letting minor obtain a pistol).
128	1877	Alabama	Wade Keyes, The Code of Alabama, 1876, ch. 3, § 4109	Prohibited the concealed carrying of any Bowie knife, or any other knife of like kind or description, pistol, air gun, slungshot, brass knuckles, or other deadly or dangerous weapon, unless the person was	Bowie knife; Pistol; Air gun; Slungshot; Metal knuckles; Other deadly or		

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				threatened with, or had good reason to apprehend, an attack, or “while traveling, or setting out on a journey.” Punishable by fine of \$50-300 and imprisonment of not more than 6 months.	dangerous weapon		
129	1877	Colorado – Town of Georgetown	Edward O. Wolcott, The Ordinances of Georgetown [Colorado] Passed June 7th, A.D. 1877, at 100, § 9	Prohibited the concealed carrying of any pistol, Bowie knife, dagger, or other deadly weapon. Punishable by a fine of \$5-50.	Pistol; Bowie knife; Dagger; Other deadly weapon		
130	1877	New Jersey	Mercer Beasley, Revision of the Statutes of New Jersey: Published under the Authority of the Legislature; by Virtue of an Act Approved April 4, 1871, at 304 (1877), An Act Concerning Disorderly Persons, § 2	Prohibited The carrying of “any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to assault any person.” Punishable as a “disorderly person.”	Pistol; Hanger; Cutlass; Bludgeon; Other offensive weapon		
131	1877	South Dakota [Territory]	S.D. Terr. Pen. Code (1877), § 457 as codified in S.D. Rev. Code, Penal Code (1903), §§ 470-471.	Prohibited the carrying, “whether concealed or not,” of any slungshot, and prohibited the concealed carrying of any firearms or sharp or dangerous weapons.	Slungshot; Firearm; Sharp or dangerous weapon		
132	1877	Utah – City of Provo [Territory]	Chapter 5: Offenses Against the Person, undated, reprinted in The Revised Ordinances Of Provo City, Containing All The Ordinances In Force	Prohibited carrying a pistol, or other firearm, slungshot, false knuckles, Bowie knife, dagger or any other “dangerous or deadly weapon.” Punishable by fine up to \$25.	Pistol; Other firearm; Slungshot; Metal knuckles; Bowie knife;		

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			105, 106-07 (1877) (Provo, Utah). § 182:		Dagger; Other dangerous or deadly weapon		
133	1878	Alabama – City of Uniontown	1878 Ala. L. 437, ch. 314	Authorized Uniontown to license dealers of pistols, Bowie knives, and dirk knives.	Pistol; Bowie knife; Dirk	Added dealers of “brass knuckles” in 1884. Similar to law enacted in 1884 authorizing Tuscaloosa to regulate dealers in pistols, Bowie knives, shotguns or firearms, and knives “of like kind or description.” 1884-1885 Ala. 323, ch. 197	
134	1878	Mississippi	1878 Miss. Laws 175, An Act to Prevent the Carrying of Concealed Weapons and for Other Purposes, § 1	Prohibited the carrying of a concealed Bowie knife, pistol, brass knuckles, slungshot or other deadly weapon. Excepted travels other than “a tramp.” Punishable by fine of \$5-100.	Bowie knife; Pistol; Brass knuckles; Slungshot; Other deadly weapon	Prohibited weapons were expanded in 1896	



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135	1879	Alabama – City of Montgomery	J. M. Falkner, The Code of Ordinances of the City Council of Montgomery [Alabama] (1879), § 428	Prohibited carrying of a concealed Bowie knife, pistol, air gun, slungshot, brass knuckles, or other deadly or dangerous weapon. Punishable by a fine of \$1-100.	Bowie knife; Pistol; Air gun; Slungshot; Metal knuckles; Other deadly or dangerous weapon		
136	1879	Idaho – City of Boise [Territory]	Charter and Revised Ordinances of Boise City, Idaho. In Effect April 12, 1894, at 118-19 (1894), Carrying Concealed Weapons, § 36	Prohibited the carrying a concealed Bowie knife, dirk knife, pistol or sword in cane, slungshot, metallic knuckles, or other dangerous or deadly weapon, unless traveling or setting out on a journey. Punishable by fine up to \$25 and/or imprisonment up to 20 days.	Bowie knife; Dirk; Pistol; Sword cane; Slungshot; Metallic knuckles; Other dangerous or deadly weapons		<i>State v. Hart</i> , 66 Idaho 217 (1945) (upheld under state constitution)
137	1879	Louisiana	La. Const. of 1879, art. III	Provided the right to bear arms, but authorizes the passage of laws restricting the carrying of concealed weapons.	Concealed weapons		
138	1879	Montana [Territory]	1879 Mont. Laws 359, Offences against the Lives and Persons of Individuals, ch. 4, § 23	Prohibited dueling and killing a person involved with a rifle, shot-gun, pistol, Bowie knife, dirk, small-sword, back-sword, or other dangerous weapon. Punishable by death by hanging.	Rifle; Shotgun; Pistol; Bowie knife; Dirk; Small sword; Back sword; Other		

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					dangerous weapon		
139	1879	North Carolina	North Carolina: N.C. Sess. Laws (1879), ch. 127, as codified in North Carolina Code, Crim. Code, ch. 25 (1883) § 1005, Concealed weapons, the carrying or unlawfully, a misdemeanor	Prohibited the concealed carrying of any pistol, Bowie knife, dirk, dagger, slungshot, loaded case, metal knuckles, razor, or other deadly weapon. Exemption for carrying on the owner's premises. Punishable by fine or imprisonment at the discretion of the court.	Pistol; Bowie knife; Dirk; Dagger; Slungshot; Metal knuckles; Razor; Other deadly weapon		
140	1880	Ohio	Michael Augustus Daugherty, The Revised Statutes and Other Acts of a General Nature of the State of Ohio: In Force January 1, 1880, at 1633 (Vol. 2, 1879), Offences Against Public Peace, § 6892	Prohibited the concealed carrying of any pistol, Bowie knife, dirk, or other dangerous weapon. Punishable by a fine of up to \$200 or imprisonment for up to 30 days for the first offense, and a fine of up to \$500 or imprisonment for up to 3 months for the second offense.	Pistol; Bowie knife; Other dangerous weapon		
141	1880	South Carolina	1880 S.C. Acts 448, § 1, as codified in S.C. Rev. Stat. (1894), § 129	Prohibited the carrying of a concealed pistol, dirk, dagger, slungshot, metal knuckles, razor, or other deadly weapon. Punishable by fine up to \$200 and/or imprisonment up to 1 year.	Pistol; Dirk; Dagger; Slungshot; Metal knuckles; Razor; Other deadly weapon		
142	1881	Alabama	1880-1881 Ala. L. 38-39, ch. 44	Prohibited the concealed carrying of any Bowie knife, or any other knife of like kind or	Bowie knife; Pistol; Air gun;	Amended in 2022 to remove	

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				description, pistol, or firearm of “any other kind or description,” or air gun. Punishable by fine of \$50-300 and imprisonment of not more than 6 months. Further provided that fines collected under the statute would be monetary and not in-kind payments.	Slingshot; Metal knuckles; Other deadly or dangerous weapon	prohibition on concealed carry of Bowie knives. <i>See</i> Ala. Stat. § 13A-11-50.	
143	1881	Arkansas	1881 Ark. Acts 191, ch. 96, § 1-2	Prohibited the carrying of any dirk, Bowie knife, sword, spear cane, metal knuckles, razor, or any pistol (except pistols that are used in the Army or Navy if carried openly in the hand).	Dirk; Bowie knife; Sword; Spear cane; Metal knuckles; Razor; Pistol		
144	1881	Colorado	Colo. Rev. Stat 1774, § 248 (1881)	Prohibited the concealed carrying of any firearms, any pistol, revolver, Bowie knife, dagger, slingshot, brass knuckles, or other deadly weapon, unless authorized by chief of police.	Pistol; Revolver; Bowie knife; Dagger; Slingshot; Metal knuckles; Other deadly weapon		
145	1881	Delaware	1881 Del. Laws 987, An Act Providing for the Punishment of Persons Carrying Concealed Deadly Weapons, ch. 548, § 1	Prohibited the carrying of concealed deadly weapons or selling deadly weapons other than an ordinary pocket knife to minors. Punishable by a fine of \$25-200 or imprisonment for 10-30 days.	Deadly weapon		

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146	1881	Illinois	Ill. Act of Apr. 16, 1881, as codified in Ill. Stat. Ann., Crim. Code 73 (1885), ch. 38, Possession or sale forbidden, § 1	Prohibited the possession, selling, loaning, or hiring for barter of a slungshot or metallic knuckles or other deadly weapon. Punishable as a misdemeanor.	Slungshot; Metallic knuckles; Other deadly weapon		
147	1881	Illinois	Harvey Bostwick Hurd, Late Commissioner, The Revised Statutes of the State of Illinois. 1882. Comprising the “Revised Statutes of 1874,” and All Amendments Thereto, Together with the General Acts of 1875, 1877, 1879, 1881 and 1882, Being All the General Statutes of the State, in Force on the First Day of December, 1882, at 375 (1882), Deadly Weapons: Selling or Giving to Minor, § 54b.	Prohibited selling, giving, loaning, hiring for barter any minor a pistol, revolver, derringer, Bowie knife, dirk or other deadly weapon. Punishable by fine of \$25-200.	Pistol; Revolver; Derringer; Bowie knife; Dirk; Other deadly weapon		
148	1881	Indiana	The Revised Statutes of Indiana: Containing, Also, the United States and Indiana Constitutions and an Appendix of Historical Documents. Vol. 1, at 366 (1881), Crimes, § 1957	Prohibited maliciously or mischievously shooting a gun, rifle, pistol, or other missile or weapon, or throwing a stone, stick, club, or other substance at a vehicle. Punishable by imprisonment for 30 days to 1 year and a fine of \$10-100.	Gun; Rifle; Pistol; Other missile or weapon; Stone; Stick; Club; Other substance		

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149	1881	Nevada	David E. Baily, The General Statutes of the State of Nevada. In Force. From 1861 to 1885, Inclusive. With Citations of the Decisions of the Supreme Court Relating Thereto, at 1077 (1885), An Act to prohibit the carrying of concealed weapons by minors, § 1	Prohibited a minor from carrying a concealed dirk, pistol, sword in case, slungshot, or other dangerous or deadly weapon. Punishable by fine of \$20-200 and/or imprisonment of 30 days to 6 months.	Dirk; Pistol; Sword in case; Slungshot; Other dangerous or deadly weapon		
150	1881	New York	George S. Diossy, The Statute Law of the State of New York: Comprising the Revised Statutes and All Other Laws of General Interest, in Force January 1, 1881, Arranged Alphabetically According to Subjects, at 321 (Vol. 1, 1881), Offenses Against Public Decency; Malicious Mischief, and Other Crimes not Before Enumerated, Concealed Weapons, § 9	Prohibited using, attempting to use, or concealing a slungshot, billy, sandclub or metal knuckles, and any dirk. Punishable by imprisonment for up to 1 year and/or a fine up to \$500.	Slungshot; Billy; Sandclub; Metal knuckles; Dirk		
151	1881	Tennessee – City of Nashville	William King McAlister Jr., Ordinances of the City of Nashville, to Which are Prefixed the State Laws Chartering and Relating to the City, with an Appendix, at 340-41	Prohibited the carrying of pistol, Bowie knife, dirk, slungshot, brass knuckles, or other deadly weapon. Punishable by fine of \$10-50 for a first offense and \$50 for subsequent offenses.	Pistol; Bowie knife; Dirk; Slungshot; Metal knuckles;		

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			(1881), Ordinances of the City of Nashville, Carrying Pistols, Bowie-Knives, Etc., § 1		Other deadly weapon		
152	1881	Washington [Territory]	1881 Wash. Code 181, Criminal Procedure, Offenses Against Public Policy, ch. 73, § 929	Prohibited the carrying of “any concealed weapon.” Punishable by fine up to \$100 or imprisonment up to 30 days.	Concealed weapon		
153	1881	Washington – City of New Tacoma [Territory]	1881 Wash. Sess. Laws 76, An Act to Confer a City Govt. on New Tacoma, ch. 6, § 34, pt. 15	Authorized New Tacoma to regulate transporting, storing, or selling gunpowder, giant powder, dynamite, nitroglycerine, or other combustibles without a license, as well as the carrying concealed deadly weapons, and the use of guns, pistols, firearms, firecrackers.	Gunpowder; Giant powder; Dynamite; Nitroglycerine; Other combustible; Concealed deadly weapon; Gun; Pistol; Firearm		
154	1881	Washington [Territory]	William Lair Hill, Ballinger’s Annotated Codes and Statutes of Washington, Showing All Statutes in Force, Including the Session Laws of 1897, at 1956 (Vol. 2, 1897)	Prohibited exhibiting a dangerous weapon in a manner likely to cause terror. Punishable by fine up to \$25.	Dangerous weapon		
155	1882	Georgia	1882-83 Gal. L. 48-49, ch. 94	Prohibited the concealed carrying of any “pistol, dirk, sword in a cane, spear, Bowie-knife, or any other kind of knives manufactured and sold	Pistol; Dirk; Sword cane; spear Bowie knife;		

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				for the purpose of offense and defense.”	Other kind of knife		
156	1882	Georgia	1882-83 Ga. L. 37, ch. 18	Imposed \$25 occupational tax on dealers of pistols, revolvers, dirks, or Bowie knives.	Pistol; Revolver; Dirk; Bowie knife	Raised to \$100 in 1884.	
157	1882	Iowa – City of Sioux City	S. J. Quincy, Revised Ordinances of the City of Sioux City, Iowa, at 62 (1882), Ordinances of the City of Sioux City, Iowa, § 4.	Prohibited the carrying a concealed pistol, revolver, slungshot, cross-knuckles, knuckles of lead, brass or other metal, or any Bowie knife, razor, billy, dirk, dirk knife or Bowie knife, or other dangerous weapon.	Pistol; Revolver; Slungshot; Cross-knuckles; Metal Knuckles; Bowie knife; Razor; Billy; Dirk; Other dangerous weapon		
158	1882	West Virginia	1882 W. Va. Acts 421-22; W. Va. Code, ch. 148, § 7	Prohibited the carrying of a pistol, dirk, Bowie knife, razor, slungshot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon. Also prohibited selling any such weapon to a minor. Punishable by fine of \$25-200 and imprisonment of 1-12 months.	Pistol; Dirk; Bowie knife; Razor; Slungshot; Billy; Metal knuckles; Other dangerous or deadly weapon		<i>State v. Workman</i> , 35 W. Va. 367 (1891) (upheld under the Second Amendment), <i>abrogated by New York State Rifle &amp; Pistol Ass’n v. Bruen</i> , 142



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							S. Ct. 2111, 2153 (2022)
159	1883	Illinois – City of Danville	Revised Ordinances of the City of Danville [Illinois], at 66 (1883), Ordinances of the City of Danville. Concealed Weapons, § 22.	Prohibited the carrying of a concealed pistol, revolver, derringer, Bowie knife, dirk, slungshot, metallic knuckles, or a razor, as a weapon, or any other deadly weapon. Also prohibited displaying the weapon in a threatening or boisterous manner. Punishable by fine of \$1-100 and forfeiting the weapon, if ordered by the magistrate.	Pistol; Revolver; Derringer; Bowie knife; Dirk; Slungshot; Metallic knuckles; Razor; Other deadly weapon		
160	1883	Kansas	1883 Kan. Sess. Laws 159, An Act to Prevent Selling, Trading Or Giving Deadly Weapons or Toy Pistols to Minors, and to Provide Punishment Therefor, §§ 1-2	Prohibited the selling, trading, giving, or loaning of a pistol, revolver, or toy pistol, dirk, Bowie knife, brass knuckles, slungshot, or other dangerous weapons to any minor, or to any person of notoriously unsound mind. Also prohibited the possession of such weapons by any minor. Punishable by fine of \$5-100. Also prohibited a minor from possessing a pistol, revolver, toy pistol by which cartridges may be exploded, dirk, Bowie knife, brass knuckles, slungshot, or other dangerous weapon. Punishable by fine of \$1-10.	Pistol; Revolver; Toy pistol; Dirk; Bowie knife; Brass knuckles; Slungshot; Other dangerous weapons		

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161	1883	Missouri	1883 Mo. Laws 76, An Act to Amend Section 1274, Article 2, Chapter 24 of the Revised Statutes of Missouri, Entitled "Of Crimes And Criminal Procedure" § 1274	Prohibited the carrying of a concealed fire arms, Bowie knife, dirk, dagger, slungshot, or other deadly weapon to a church, school, election site, or other public setting or carrying in a threatening manner or while intoxicated. Punishable by fine of \$25-200 and/or by imprisonment up to 6 months.	Fire arms; Bowie knife; Dirk; Dagger; Slungshot; Other deadly weapon		
162	1883	Washington – City of Snohomish [Territory]	1883 Wash. Sess. Laws 302, An Act to Incorporate the City of Snohomish, ch. 6, § 29, pt. 15	Authorized City of Snohomish to regulate and prohibit carrying concealed deadly weapons and to prohibit using guns, pistols, firearms, firecrackers, bombs, and explosives.	Deadly weapon; Gun; Pistol; Firearm; Firecracker; Bomb		
163	1883	Wisconsin – City of Oshkosh	1883 Wis. Sess. Laws 713, An Act to Revise, consolidate And Amend The Charter Of The City Of Oshkosh, The Act Incorporating The City, And The Several Acts Amendatory Thereof, ch. 6, § 3, pt. 56	Prohibited the carrying of a concealed pistol or colt, or slungshot, or cross knuckles or knuckles of lead, brass or other metal or Bowie knife, dirk knife, or dirk or dagger, or any other dangerous or deadly weapon. Punishable by confiscation of the weapon.	Pistol; Colt; Slungshot; Cross knuckles; Knuckles of lead; Metal knuckles; Bowie knife; Dirk; Dagger; Any other dangerous or deadly weapon		

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164	1884	Georgia	1884-85 Ga. L. 23, ch. 52	Imposed \$100 occupational tax on dealers of pistols, revolvers, dirks, or Bowie knives.	Pistol; Revolver; Dirk; Bowie knife	Reduced to \$25 in 1888.	
165	1884	Maine	The Revised Statutes of the State of Maine, Passed August 29, 1883, and Taking Effect January 1, 1884, at 928, (1884), Prevention of Crimes, § 10	Prohibited the carrying of a dirk, dagger, sword, pistol, or other offensive and dangerous weapon without reasonable cause to fear an assault.	Dirk; Dagger; Sword; Pistol; Other offensive and dangerous weapon		
166	1884	Minnesota – City of Saint Paul	W. P. Murray, The Municipal Code of Saint Paul: Comprising the Laws of the State of Minnesota Relating to the City of Saint Paul, and the Ordinances of the Common Council; Revised to December 1, 1884, at 289 (1884), Concealed Weapons – License, § 1	Prohibited the carrying of a concealed pistol or pistols, dirk, dagger, sword, slungshot, cross-knuckles, or knuckles of lead, brass or other metal, Bowie knife, dirk knife or razor, or any other dangerous or deadly weapon. Punishable by seizure of the weapon.	Pistol; Dirk; Dagger; Sword; Slungshot; Cross-knuckles; Metal knuckles; Bowie knife; Dirk; Razor; Other dangerous or deadly weapon		
167	1884	Tennessee	Tenn. Pub. Acts (1879), ch. 186, as codified in Tenn. Code (1884)	Prohibited the carrying, “publicly or privately,” of any dirk, razor, sword cane, loaded cane, slungshot, brass knuckles, Spanish stiletto, belt or pocket pistol, revolver, or any kind of pistol.	Dirk; Razor; Sword cane; Loaded cane; Slungshot; Metal knuckles;		

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					Spanish stiletto; Pistol; Revolver		
168	1884	Vermont	1884 Vt. Acts & Resolves 74, An Act Relating To Traps, § 1	Prohibited the setting of any spring gun trap. Punishable by a fine of \$50-500 and liability for twice the amount of any damage resulting from the trap.	Spring gun		
169	1884	Wyoming [Territory]	1884 Wyo. Sess. Laws, ch. 67, § 1, as codified in Wyo. Rev. Stat., Crimes (1887): Exhibiting deadly weapon in angry manner. § 983	Prohibited exhibiting in a threatening manner a fire-arm, Bowie knife, dirk, dagger, slungshot or other deadly weapon. Punishable by fine of \$10-100 or imprisonment up to 6 months.	Pistol; Bowie knife; Dirk; Dagger; Slungshot; Other deadly weapon		
170	1885	Montana [Territory]	1885 Mont. Laws 74, Deadly Weapons, An Act to Amend § 62 of Chapter IV of the Fourth Division of the Revised Statutes, § 62-63	Prohibited possessing, carrying, or purchasing a dirk, dirk-knife, sword, sword cane, pistol, gun, or other deadly weapon, and from using the weapon in a threatening manner or in a fight. Punishable by fine of \$10-100 and/or imprisonment for 1-3 months.	Dirk; Sword; Sword cane; Pistol; Gun; Other deadly weapon		
171	1885	New York	George R. Donnan, Annotated Code of Criminal Procedure and Penal Code of the State of New York as Amended 1882-85, at 172 (1885), Carrying, Using, Etc., Certain Weapons, § 410	Prohibited using or attempting to use, carrying, concealing, or possessing a slungshot, billy, sandclub or metal knuckles, or a dagger, dirk or dangerous knife. Punishable as a felony, and as a misdemeanor if a minor.	Slungshot; Billy; Sandclub; Metal knuckles; Dagger; Dirk;		

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					Dangerous knife		
172	1885	New York – City of Syracuse	Charter and Ordinances of the City of Syracuse: Together with the Rules of the Common Council, the Rules and Regulations of the Police and Fire Departments, and the Civil Service Regulations, at 215 (1885), [Offenses Against the Public Peace and Quiet,] § 7	Prohibited the carrying or using with the intent to do bodily harm a dirk, Bowie knife, sword or spear cane, pistol, revolver, slungshot, jimmy, brass knuckles, or other deadly or unlawful weapon. Punishable by a fine of \$25-100 and/or imprisonment for 30 days to 3 months.	Dirk; Bowie knife; Sword; Spear cane; Pistol; Revolver; Slungshot; Jimmy; Metal knuckles; Other deadly or unlawful weapon		
173	1885	Oregon	1885 Or. Laws 33, An Act to Prevent Persons from Carrying Concealed Weapons and to Provide for the Punishment of the Same, §§ 1-2	Prohibited the concealed carrying of any revolver, pistol, or other firearm, or any knife (other than an “ordinary pocket knife”), or any dirk, dagger, slungshot, metal knuckles, or any instrument that could cause injury. Punishable by a fine of \$10-200 or imprisonment for 5-100 days.	Revolver; Pistol; Other firearm; Knife; Dirk; Dagger; Slungshot; Metal knuckles		
174	1886	Colorado – City of Denver	Isham White, The Laws and Ordinances of the City of Denver, Colorado, at 369, § 10 (1886)	Prohibited the carrying of any slungshot, colt, or metal knuckles while engaged in any breach of the peace. Punishable by a fine of \$25-300.	Slungshot; Colt; Metal knuckles		
175	1886	Georgia	1886 Ga. L. 17, ch. 54	Imposed \$100 occupational tax on dealers of pistols, revolvers,	Pistol; Revolver; Dirk;		

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				dirks, Bowie knives, and “pistol or revolver cartridges.”	Bowie knife; Pistol or revolver cartridges		
176	1886	Maryland – County of Calvert	1886 Md. Laws 315, An Act to Prevent the Carrying of Guns, Pistols, Dirk-knives, Razors, Billies or Bludgeons by any Person in Calvert County, on the Days of Election in said County, Within One Mile of the Polls § 1	Prohibited the carrying of a gun, pistol, dirk, dirk-knife, razor, billy or bludgeon on an election day. Punishable by a fine of \$10-50.	Gun; Pistol; Dirk; Razor; Billy; Bludgeon		
177	1886	Maryland – County of Calvert	John Prentiss Poe, The Maryland Code. Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Acts of the Session of 1888 Incorporated Therein, and Prefaced with the Constitution of the State, at 468-69 (Vol. 1, 1888), Concealed Weapons, § 30	Prohibited the carrying of a concealed pistol, dirk knife, Bowie knife, slungshot, billy, sandclub, metal knuckles, razor, or any other dangerous or deadly weapon. Punishable by fine of up to \$500 or imprisonment of up to 6 months.	Pistol; Dirk; Bowie knife; Slungshot; Billy; Sandclub; Metal knuckles; Razor; Other dangerous or deadly weapon		
178	1886	Maryland	1886 Md. Laws 315, An Act to Prevent the Carrying of Guns, Pistols, Dirk-knives, Razors, Billies or Bludgeons by any Person in Calvert County, on the Days of	Prohibited the carrying of a gun, pistol, dirk, dirk-knife, razor, billy or bludgeon on an election day within 300 yards of the polls. Punishable by fine of \$10-50.	Gun; Pistol; Dirk; Razor; Billy; Bludgeon		

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**Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Election in said County, Within One Mile of the Polls § 1				
179	1887	Alabama	1886 Ala. L. 36, ch. 4	Imposed \$300 occupational tax on dealers of pistols, pistol cartridges, Bowie knives, and dirk knives.	Pistol; Pistol cartridges; Bowie knife; Dirk		
180	1887	Iowa – City of Council Bluffs	Geoffrey Andrew Holmes, Compiled Ordinances of the City of Council Bluffs, and Containing the Statutes Applicable to Cities of the First-Class, Organized under the Laws of Iowa, at 206-07 (1887), Carrying Concealed Weapons Prohibited, § 105	Prohibited the carrying of a concealed pistol or firearms, slungshot, brass knuckles, or knuckles of lead, brass or other metal or material, or any sandbag, air guns of any description, dagger, Bowie knife, or instrument for cutting, stabbing or striking, or other dangerous or deadly weapon, instrument or device.	Pistol; Slungshot; Metal knuckles; Sandbag; Air guns; Dagger; Bowie knife; Instrument for cutting; stabbing or striking; Other dangerous or deadly weapon		
181	1887	Kansas – City of Independence	O. P. Ergenbright, Revised Ordinances of the City of Independence, Kansas: Together with the Amended Laws Governing Cities of the Second Class and Standing Rules of the City Council, at 162 (1887), Weapons, § 27	Prohibited using a pistol or other weapon in a hostile or threatening manner. Also prohibited carrying a concealed pistol, dirk, Bowie knife, revolver, slungshot, billy, brass, lead, or iron knuckles, or any deadly weapon. Punishable by fine of \$5-100.	Pistol; Dirk; Bowie knife; Revolver; Slungshot; Billy; Metal knuckles; Any deadly weapon		



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**Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
182	1887	Michigan	1887 Mich. Pub. Acts 144, An Act to Prevent The Carrying Of Concealed Weapons, And To Provide Punishment Therefore, § 1	Prohibited the carrying of a concealed dirk, dagger, sword, pistol, air gun, stiletto, metallic knuckles, pocket-billy, sandbag, skull cracker, slungshot, razor or other offensive and dangerous weapon or instrument.	Dirk; Dagger; Sword; Pistol; Air gun; Stiletto; Metallic knuckles; Billy; Sand bag; Skull cracker; Slungshot; Razor; Other offensive and dangerous weapon or instrument		
183	1887	Montana [Territory]	1887 Mont. Laws 549, Criminal Laws, § 174	Prohibited the carrying of a any pistol, gun, knife, dirk-knife, bludgeon, or other offensive weapon with the intent to assault a person. Punishable by fine up to \$100 or imprisonment up to 3 months.	Pistol; Knife; Dirk; Bludgeon; Other offensive weapon		
184	1887	New Mexico [Territory]	An Act to Prohibit the Unlawful Carrying and Use of Deadly Weapons, Feb. 18, 1887, reprinted in Acts of the Legislative Assembly of the Territory of New Mexico, Twenty-Seventh Session 55, 58 (1887)	Defined “deadly weapons” as including pistols, whether the same be a revolved, repeater, derringer, or any kind or class of pistol or gun; any and all kinds of daggers, Bowie knives, poniards, butcher knives, dirk knives, and all such weapons with which dangerous cuts can	Pistol; Dagger; Bowie Knife; Poniard; Butcher Knife; Dirk		

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Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				be given, or with which dangerous thrusts can be inflicted, including sword canes, and any kind of sharp pointed canes; as also slungshots, bludgeons or any other deadly weapons.			
185	1887	Virginia	The Code of Virginia: With the Declaration of Independence and the Constitution of the United States; and the Constitution of Virginia, at 897 (1887), Offences Against the Peace, § 3780	Prohibited the carrying of a concealed pistol, dirk, Bowie knife, razor, slungshot, or any weapon of the like kind. Punishable by fine of \$20-100 and forfeiture of the weapon.	Pistol; Dirk; Bowie knife; Razor; Slungshot; Any weapon of the like kind		
186	1888	Maryland – County of Kent	John Prentiss Poe, The Maryland Code : Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Public Local Acts of the Session of 1888 incorporated therein, at 1457 (Vol. 2, 1888), Election Districts–Fences, § 99	Prohibited carrying, on days of an election, any gun, pistol, dirk, dirk-knife, razor, billy or bludgeon. Punishable by a fine of \$5-20.	Gun; Pistol; Dirk; Razor; Billy; Bludgeon		
187	1888	Florida	Fla. Act of Aug. 6, 1888, ch. 1637, subch. 7, § 10, as codified in Fla. Rev. State., tit. 2, pt. 5 (1892)	Prohibited the concealed carrying of slungshot, metallic knuckles, billies, firearms, or other dangerous weapons if arrested for committing a criminal offense or disturbance of the peace. Punishable by	Slungshot; Metallic knuckles; Billy; Firearms; Other		

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Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				imprisonment up to 1 year and a fine up to \$50.	dangerous weapon		
188	1888	Georgia	1888 Ga. L. 22, ch. 123	Imposed \$25 occupational tax on dealers of pistols, revolvers, dirks, or Bowie knives.	Pistol; Revolver; Dirk; Bowie knife; Pistol or revolver cartridges	Raised to \$100 in 1890.	
189	1888	Maryland – City of Baltimore	John Prentiss Poe, The Maryland Code. Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Public Local Acts of the Session of 1888 Incorporated Therein, at 522-23 (Vol. 1, 1888), City of Baltimore, § 742	Prohibited the carrying of a pistol, dirk knife, Bowie knife, slingshot, billy, brass, iron or any other metal knuckles, razor, or any other deadly weapon if arrested for being drunk and disorderly. Punishable by fine of \$5-25, and confiscation of the weapon.	Pistol; Dirk; Bowie knife; Slingshot; Billy; Metal knuckles; Razor; Other deadly weapon		
190	1888	Minnesota	George Brooks Young. General Statutes of the State of Minnesota in Force January 1, 1889, at 1006 (Vol. 2, 1888), Making, Selling, etc., Dangerous Weapons, §§ 333-34	Prohibited manufacturing, selling, giving, or disposing of a slungshot, sandclub, or metal knuckles, or selling or giving a pistol or firearm to a minor without magistrate consent. Also prohibited carrying a concealed slungshot, sandclub, or metal knuckles, or a dagger, dirk, knife, pistol or other firearm, or any dangerous weapon.	Slungshot; Sandclub; Metal knuckles; Dagger; Dirk; Knife; Pistol; Any dangerous weapon		
191	1888	Utah – City of Salt Lake City	Dangerous and Concealed Weapon, Feb. 14, 1888,	Prohibited carrying a slingshot or any concealed deadly weapon	Slingshot; Deadly weapon		

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Defendant's Survey of Relevant Statutes (Pre-Founding – 1888)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
		[Territory]	reprinted in The Revised Ordinances Of Salt Lake City, Utah 283 (1893) (Salt Lake City, Utah). § 14	without permission of the mayor. Punishable by fine up to \$50.			

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Defendant's Survey of Relevant Statutes (1889–1930s)<sup>1, 2</sup>**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
192	1889	Arizona [Territory]	1889 Ariz. Sess. Laws 16, § 1	Prohibited carrying of any pistol, dirk, dagger, slungshot, sword cane, spear, brass knuckles, Bowie knife, or any knife manufactured to offensive or defensive purposes. Punishable by a fine of \$25-100 and forfeiture of the weapon.	Pistol; Dirk; Dagger; Slungshot; Sword cane; Spear; Brass knuckles; Bowie knife; Other offensive or defensive knife		
193	1889	Idaho [Territory]	The Act of the Territory of Idaho approved February 4, 1889 (Sess. Laws 1889, p. 27)	Prohibited private persons from carrying “deadly weapons” within any city, town or village.	Deadly weapons		<i>In re Brickey</i> , 8 Idaho 597 (1902) (held unconstitutional under the Second Amendment and state constitution)
194	1889	Pennsylvania – City of Johnstown	Laws of the City of Johnstown, Pa., Embracing City Charter, Act of Assembly of May 23, 1889,	Prohibited the concealed carrying of any pistol, razor, dirk, Bowie knife, blackjack, handy billy, or other deadly	Pistol; Razor; Dirk; Bowie knife;		

<sup>1</sup> In compliance with the Court's Order dated December 15, 2022 (Dkt. 134), Defendant created this survey of statutes, laws, and regulations that Defendant has determined are relevant to this action. Plaintiffs disagree that nearly all of those statutes, laws, and regulations are relevant to the historical analysis required in this case, and in compliance with the Court's December 15 Order, the chart reflects Plaintiffs' position regarding the relevance of each law.

<sup>2</sup> The surveys have been filed in compliance with the Court's Order directing the parties to identify all relevant laws, statutes, and regulations from the time of the Second Amendment to twenty years after adoption of the Fourteenth Amendment. In compliance with that Order and in recognition of the historical inquiry mandated by *Bruen*, the spreadsheets identify hundreds of relevant firearms laws, some of which were drafted well before the Thirteenth Amendment's abolition of slavery and the Fourteenth Amendment's Equal Protection Clause. While our subsequent briefing, as ordered by the Court, will explain in more detail the historical context and relevance of such laws, the Attorney General emphasizes his strong disagreement with racial and other improper discrimination that existed in some such laws, and which stand in stark contrast to California's commonsense firearm laws, which are designed to justly and equitably protect all Californians. The listing of such racist and discriminatory statutes should in no way be construed as an endorsement of such laws by the Attorney General or his counsel in this matter.

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			for the Government of Cities of the Third Class, General and Special Ordinances, Rules of Select and Common Councils and Joint Sessions, at 86 (1897), An Ordinance for the Security of Persons and Property of the Inhabitants of the City of Johnstown; The preservation of the Public Peace and Good Order of the City, and Prescribing Penalties for Offenses Against the Same, § 12	weapon. Punishable by fine of \$5-50.	Blackjack; Billy; Other deadly weapon		
195	1890	Connecticut – City of New Haven	Charles Stoers Hamilton, Charter and Ordinances of the City of New Haven, Together with Legislative Acts Affecting Said City, at 164, § 192 (1890)	Prohibited the concealed carrying of any metal knuckles, pistol, slungshot, stiletto, or similar weapons, absent written permission of the mayor or superintendent of police. Punishable by a fine of \$5-50.	Metal knuckles; Slungshot; Stiletto		
196	1890	Georgia	1890 Ga. L. 38, ch. 131	Imposed \$100 occupational tax on dealers of pistols, revolvers, dirks, or Bowie knives.	Pistol; Revolver; Dirk; Bowie knife; Pistol or revolver cartridges		
197	1890	Louisiana	890 La. L. 39, ch. 46	Prohibiting the transfer of any pistol, dirk, Bowie knife, or “any other dangerous weapon, which may be	Pistol; Dirk; Bowie knife;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				carried concealed on a person to any person under the age of 21.	Other dangerous weapon		
198	1890	Maryland – City of Baltimore	John Prentiss Poe, The Baltimore City Code, Containing the Public Local Laws of Maryland Relating to the City of Baltimore, and the Ordinances of the Mayor and City Council, in Force on the First Day of November, 1891, with a Supplement, Containing the Public Local Laws Relating to the City of Baltimore, Passed at the Session of 1892 of the General Assembly, and also the Ordinances of the Mayor and City Council, Passed at the Session of 1891-92, and of 1892-1893, up to the Summer Recess of 1893, at 297-98 (1893), Ordinances of Baltimore, § 742A	Prohibited the carrying of a concealed pistol, dirk-knife, Bowie knife, slingshot, billy, sandclub, metal knuckles, razor or any other dangerous or deadly weapon, or who openly carries with the intent to injure a person. Punishable by fine of up to \$500 and imprisonment up to 6 months.	Pistol; Dirk; Bowie knife; Slingshot; Billy; Sandclub; Metal knuckles; Razor; Other dangerous or deadly weapon		
199	1890	Nebraska – City of Omaha	W. J. Connell, The Revised Ordinances of the City of Omaha, Nebraska, Embracing All Ordinances of a General Nature in Force April 1, 1890, Together with the Charter for Metropolitan Cities, the Constitution of	Prohibited the carrying of a concealed pistol or revolver, colt, billy, slungshot, brass knuckles or knuckles of lead, dirk, dagger, or any knife resembling a Bowie knife, or any other dangerous or	Pistol; Revolver; Colt; Billy; Slungshot; Metal knuckles Dirk; Dagger;		



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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			the United States and the Constitution of the State of Nebraska, at 344 (1890), Ordinances of Omaha, Concealed Weapons, § 10	deadly weapon. Punishable by fine up to \$100.	Any knife resembling a bowie knife; Other dangerous or deadly weapon		
200	1890	Nebraska – City of Omaha	W. J. Connell, The Revised Ordinances of the City of Omaha, Nebraska, Embracing All Ordinances of a General Nature in Force April 1, 1890, Together with the Charter for Metropolitan Cities, the Constitution of the United States and the Constitution of the State of Nebraska, at 344 (1890), Ordinances of Omaha, Concealed Weapons, § 10.	Prohibited the carrying of a concealed pistol or revolver, colt, billy, slungshot, brass knuckles or knuckles of lead, dirk, dagger, or any knife resembling a Bowie knife, or any other dangerous or deadly weapon. Punishable by fine up to \$100.	Pistol; Revolver; Colt; Billy; Slungshot; Metal knuckles; Dirk; Dagger; Any knife resembling a bowie knife; Other dangerous or deadly weapon		
201	1890	Oklahoma [Territory]	1890 Okla. Laws 495, art. 47, §§ 1, 2, 10; Leander G. Pitman, The Statutes of Oklahoma, 1890. (From the Laws Passed by the First Legislative Assembly of the Territory), at 495-96 (1891)	Prohibited the concealed carrying of any pistol, revolver, Bowie knife, dirk, dagger, slungshot, sword cane, spear, metal knuckles, or any other knife or instrument manufactured or sold solely for defense. Also prohibited the carrying of any pistol, revolver, Bowie knife, dirk knife, loaded cane, billy, metal knuckles, or “any other offensive or defense weapon.” Punishable by a fine of \$50-	Pistol; Revolver; Bowie knife; Dirk; Dagger; Slungshot; Sword cane; Spear; Metal knuckles; Other knife; Loaded cane; Billy; Other offensive or defensive weapon		

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Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				500 and imprisonment for 3-12 months.			
202	1890	Oklahoma [Territory]	1890 Okla. Sess. Laws 475, Crimes Against The Public Health And Safety, §§ 18-19	Prohibited the manufacture, sale, giving, or disposing of any instrument or weapon usually known as a slungshot, and prohibited the carrying any slungshot or similar weapon.	Slungshot		
203	1890	Oklahoma – Town of Checotah [Territory]	General Laws Relating to Incorporated Towns of Indian Territory, at 37 (1890), Revised Ordinances of the Town of Checotah, Ordinance No. 11, § 3	Prohibited the carrying of any pistol; dirk; butcher knife; Bowie knife; sword; spear-cane, metal knuckles, razor, slungshot, sandbag, or a switchblade.	Pistol; Dirk; Butcher knife; Sword; Spear cane; Metal knuckles; Razor; Slungshot; Sandbag; Switchblade		
204	1891	Michigan	1891 Mich. Pub. Acts 409, Police Department, pt 15	Prohibited the carrying of a concealed pistol, revolver, Bowie knife, dirk, slungshot, billie, sandbag, false knuckles, or other dangerous weapon. Also prohibited lurking or being concealed with the intent to injure a person or property, or threatening to beat or kill a person or property. Punishable by fine up to \$100 and the costs of	Pistol; Revolver; Bowie; Dirk; Slungshot; Billy; Sandbag; False knuckles; Other dangerous weapon		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				prosecution, and in default of payment, imprisonment.			
205	1891	Missouri	"Shot by a Trap-Gun," The South Bend Tribune, Feb. 11, 1891	Fined farmer for setting a trap gun that killed his wife.	Trap gun		
206	1891	North Dakota	1891 N.D. Laws 193, An Act to Amend Sections 1 and 2 of Chapter 63 of the General Laws of 1883, ch. 70, § 1	Prohibited the setting of any gun or gun trap to be discharged at certain animals.	Trap gun		
207	1891	West Virginia	1891 W. Va. Code 915, Of Offences Against the Peace, ch. 148, § 7	Prohibited the carrying of a pistol, dirk, Bowie knife, razor, slungshot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon. Also prohibited selling such a weapon to a minor. Punishable by fine of \$25-200 and imprisonment for 1-12 months.	Pistol; Dirk; Bowie knife; Razor; Slungshot; Billy; Metal knuckles; Other dangerous or deadly weapon		
208	1892	Alabama	1892 Ala. L. 183, ch. 95	Imposed \$300 occupational tax on dealers of pistols, pistol cartridges, Bowie knives, and dirk knives, and clarified that cartridges that can be used in a pistol shall be deemed pistol cartridges.	Pistol; Pistol cartridges; Bowie knife; Dirk		
209	1892	Georgia	1892 Ga. L. 25, ch. 133	Imposed \$100 occupational tax on dealers of pistols, revolvers, dirks, Bowie knives, and metal knuckles.	Pistol; Revolver; Dirk; Bowie knife; Pistol or revolver		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
					cartridges; Metal knuckles		
210	1892	Washington – City of Tacoma	Albert R. Heilig, Ordinances of the City of Tacoma, Washington, at 333-34 (1892)	Prohibited the carrying of a concealed a revolver, pistol or other fire arms or any knife (other than an ordinary pocket knife) or any dirk or dagger, slingshot or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person.	Revolver; Pistol; Knife; Dirk; Dagger; Slingshot; Metal knuckles; Instrument that causes injury		
211	1893	Arizona [Territory]	1893 Ariz. Sess. Laws 3, § 1	Prohibited the concealed carrying of any pistol or other firearm, dirk, dagger, slungshot, sword cane, spear, brass knuckles, Bowie knife (or any kind of knife, except a pocket knife not manufactured for offensive or defensive use).	Pistol; Other firearm; Dirk; Dagger; Slungshot; Sword-cane; Spear; Metal knuckles; Bowie knife; Any kind of knife (other than pocket knife)		
212	1893	Delaware	Revised Statutes of the State of Delaware, of Eight Hundred and Fifty-Two. As They Have Since Been Amended, Together with the Additional Laws of a Public and General Nature, Which Have Been Enacted Since the Publication of the	Prohibited the concealed carrying of deadly weapons or selling deadly weapons other than an ordinary pocket knife, and prohibited discharging any firearm in any public road. Punishable by fine of \$25-100 or by	Deadly weapon		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Revised Code of Eighteen Fifty-Two. To the Year of Our Lord One Thousand Eight Hundred and Ninety-Three; to Which are Added the Constitutions of the United States and of this State, the Declaration of Independence, and Appendix, at 987 (1893), An Act Providing for the Punishment of Persons Carrying Concealed Deadly Weapons, § 1	imprisonment for 10-30 days.			
213	1893	North Carolina	1893 N.C. L. 468-69, ch. 514	Prohibiting the transfer of any pistol, pistol cartridge, brass knucks, Bowie knife, dirk, loaded cane, or slingshot to a minor.	Pistol; Pistol cartridge; Metal knuckles; Bowie knife; Dirk; Loaded cane; Slingshot		
214	1893	Rhode Island	1893 R.I. Pub. Laws 231, An Act Prohibiting The Carrying Of Concealed Weapons, chap. 1180, § 1	Prohibited the carrying of any dirk, Bowie knife, butcher knife, dagger, razor, sword cane, air-gun, billy, metal knuckles, slungshot, pistol, or firearm of any description.	Dirk; Bowie knife; Butcher knife; Dagger; Razor; Sword Cane; Air gun; Billy; Metal knuckles; Slungshot; Pistol; Other firearm		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
215	1893	Tennessee – City of Nashville	Claude Waller, Digest of the Ordinances of the City of Nashville, to Which are Prefixed the State Laws Incorporating, and Relating to, the City, with an Appendix Containing Various Grants and Franchises, at 364-65 (1893), Ordinances of the City of Nashville, § 738	Prohibited the carrying of a pistol, Bowie knife, dirk knife, slungshot, brass knucks, or other deadly weapon. Punishable by fine of \$10-50 for a first offense and \$50 for subsequent offenses.	Pistol; Bowie knife; Dirk; Slungshot; Brass knuckles; Other deadly weapon		
216	1893	Wyoming – City of Rawlins	A. McMicken, City Attorney, The Revised Ordinances of the City of Rawlins, Carbon County, Wyoming, at 131-32 (1893), Revised Ordinances of the City of Rawlins, Article VII, Carrying Firearms and Lethal Weapons, § 1	Prohibited a person from possessing or carrying a pistol, revolver, knife, slungshot, bludgeon or other lethal weapon. Punishable by fine up to \$100 or imprisonment up to 30 days.	Pistol; Revolver; Knife; Slungshot; Bludgeon; Other lethal weapon		
217	1895	North Dakota	1895 N.D. Rev. Codes 1293, Penal Code, Crimes Against the Public Health and Safety, ch. 40, §§ 7312-13	Prohibited the carrying of any slungshot or similar weapon, and the concealed carrying of any firearm or any “sharp or dangerous weapon.”	Slungshot; Firearm; Sharp or dangerous weapon		
218	1895	North Dakota	The Revised Codes of the State of North Dakota 1895 Together with the Constitution of the United States and of the State of North Dakota with the	Prohibited the setting of any spring or trap gun.	Trap gun		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Amendments Thereto, at 1259 (1895)				
219	1895	Vermont – City of Barre	Ordinances of the City of Barre, Vermont, ch. 16, § 18 (1895)	Prohibited discharging a gun, pistol, or other loaded firearm, firecracker, serpent, or other explosive, unless on a person's own property or with the permission of the property owner. Also prohibited making a bonfire in the street except with city council permission and the carrying of concealed steel or brass knuckles, a pistol, slungshot, stiletto, or weapon of similar character.	Steel or brass knuckles; Pistol; Slungshot; Stiletto; Weapon of similar character; Gun; Loaded firearm; Firecracker; Serpent		
220	1896	California – City of Fresno	L. W. Moultrie, City Attorney, Charter and Ordinances of the City of Fresno, 1896, at 37, § 53 (1896)	Prohibited the transfer to any minor under the age of 18 any gun, pistol or other firearm, dirk, Bowie knife, powder, shot, bullets, or any combustible or dangerous material, absent written consent of parent or guardian.	Gun; Pistol; Dirk; Bowie knife; Powder; Shot; Bullets		
221	1896	California – City of Fresno	L. W. Moultrie, Charter and Ordinances of the City of Fresno, at 30, § 8 (1896)	Prohibited the concealed carrying of any pistol or firearm, slungshot, dirk, Bowie knife, or other deadly weapon, absent written permission.	Pistol; Firearm; Slungshot; Dirk; Bowie knife; Other deadly weapon		



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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
222	1896	Mississippi	1896 Miss. L. 109-10, ch. 104	Prohibited the carrying of a concealed Bowie knife, dirk, butcher knife, pistol, brass or metallic knuckles, slingshot, sword, or other deadly weapon “of like kind or description.”	Bowie knife; Dirk; Butcher knife; Pistol; Metal Knuckles; Slingshot; Sword; Other deadly weapon of like kind		
223	1896	Rhode Island	General Laws of the State of Rhode Island and Providence Plantations to Which are Prefixed the Constitutions of the United States and of the State, at 1010-11 (1896), Offences Against Public Policy, §§ 23, 24, 26	Prohibited the carrying of any dirk, Bowie knife, butcher knife, dagger, razor, sword cane, air-gun, billy, metal knuckles, slungshot, pistol, or firearm of any description. Exempted officers or watchmen whose duties required them to make arrests or guard prisoners or property.	Dirk; Bowie knife; Butcher knife; Dagger; Razor; Sword cane; Air gun; Billy; Metal knuckles; Slungshot; Pistol; Other firearm		
224	1896	Washington – City of Spokane	Rose M. Denny, The Municipal Code of the City of Spokane, Washington. Comprising the Ordinances of the City (Excepting Ordinances Establishing Street Grades) Revised to October 22, 1896, at 309-10 (1896), Ordinances of Spokane, An Ordinance to Punish the Carrying of	Prohibited the carrying of a concealed revolver, pistol or other fire-arms, or any knife (other than an ordinary pocket knife) or any dirk or dagger, sling-shot or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property. punishable by fine of \$25-100, cost of prosecution, and	Revolver; Pistol; Other firearms; Knife; Dirk; Dagger; Slingshot; Metal knuckles; Any instrument that can cause injury		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Concealed Weapons within the City of Spokane, § 1	imprisonment until fines/costs are paid.			
225	1897	Alabama	William Logan Martin, Commissioner, The Code of Alabama, Adopted by Act of the General Assembly of the State of Alabama, Approved February 16, 1897, § 27 (1897)	Tax of \$300 on the sale of pistols, pistol cartridges, Bowie knives, and dirk knives.	Pistol; Pistol cartridge; Bowie knife; Dirk		
226	1897	Missouri – City of Saint Joseph	William K. Amick, The General Ordinances of the City of Saint Joseph (A City of the Second Class) Embracing all Ordinances of General Interest in Force July 15, 1897, together with the Laws of the State of Missouri of a General Nature Applicable to the City of St. Joseph. Compiled and Arranged, at 508 (1897), Concealed Weapons – Carrying of, § 7	Prohibited the carrying of a concealed pistol or revolver, colt, billy, slungshot, cross knuckles or knuckles of lead, brass or other metal, dirk, dagger, razor, Bowie knife, or any knife resembling a Bowie knife, or any other dangerous or deadly weapon.	Pistol; Revolver,; Colt; Billy; Slungshot; Metal knuckles; Dirk; Dagger; Razor; Bowie knife; Any knife resembling a bowie knife; Other dangerous or deadly weapon		
227	1897	Texas	1897 Tex. Gen. Laws 221, An Act to Prevent the Barter, Sale And Gift of Any Pistol, Dirk, Dagger, Slung Shot, Sword Cane, Spear, or Knuckles Made of Any Metal Or Hard Substance to Any Minor Without the Written Consent of the	Prohibited the selling or giving to a minor a pistol, dirk, dagger, slungshot, sword cane, spear or knuckles made of any metal or hard substance, Bowie knife or any other knife manufactured or sold for the purpose of offense or	Pistol; Dirk; Dagger; Slungshot; Sword cane; Spear; Knuckles; Bowie knife; Any other knife		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Parent or Guardian of Such Minor. . . , ch. 155	defense without the consent of their parent or guardian. Punishable by fine of \$25-200 and/or imprisonment for 10-30 days.	used for offense or defense		
228	1897	Washington	Richard Achilles Ballinger, Ballinger's Annotated Codes and Statutes of Washington: Showing All Statutes in Force, Including the Session Laws of 1897, at 1956-57 (Vol. 2, 1897), Carrying Concealed Weapons, § 7084	Prohibited the carrying of a concealed revolver, pistol, or other fire-arms, or any knife, (other than an ordinary pocket knife), or any dirk or dagger, sling-shot, or metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person. Punishable by fine of \$25-100 and/or imprisonment for 30 days.	Revolver; Pistol; Other fire-arms; Knife; Dirk; Dagger; Slingshot; Metal knuckles; Any instrument that can cause injury		
229	1898	Georgia	1898 Ga. L. 60, ch. 103	Prohibited the concealed carry of any pistol, dirk, sword cane, spear, Bowie knife, other kind of knife "manufactured and sold for purpose of offense and defense," and any "kind of metal knucks."	Bowie knife; Other knife manufactured for wearing or carrying for offense or defense; Pistol; Sword; Sword cane; Spear; Metal knuckles		
230	1898	Oregon – City of Oregon City	The Charter of Oregon City, Oregon, Together with the Ordinances and Rules of Order, 259 (1898), An	Prohibited the carrying of any slingshot, billy, dirk, pistol, or "any concealed deadly weapon," and the	Slingshot; Billy; Dirk; Pistol;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Ordinance Providing for the Punishment of Disorderly Persons, and Keepers and Owners of Disorderly Houses, § 2	discharge of any firearm, air gun, sparrow gun, flipper, or bean shooter, unless in self-defense.	Concealed deadly weapon; Firearm; Air gun; Sparrow gun; Flipper; Bean shooter		
231	1899	Alaska	Fred F. Barker, Compilation of the Acts of Congress and Treaties Relating to Alaska: From March 30, 1867, to March 3, 1905, at App. A, p. 139 (30 Stat. L. 1253 (1899)); 1896-99 Alaska Sess. Laws 1270, ch. 6, § 117	Prohibited concealed carrying in any manner any revolver, pistol, other firearm, knife (other than an “ordinary pocket knife”), dirk, dagger, slungshot, metal knuckles, or any instrument that could cause injury to a person or property.	Pistol; Revolver; Other firearm; Knife; Dirk; Dagger; Slungshot; Metal knuckles; Other instrument		
232	1899	Nebraska – City of Fairfield	Compiled Ordinances of the City of Fairfield, Clay County, Nebraska, at 34 (1899), Ordinance No. 20, An Ordinance to Prohibit the Carrying of Concealed Weapons and Fixing a Penalty for the violations of the same. Be it ordained by the Mayor and Council of the City of Fairfield, Nebraska: § 1	Prohibited the carrying of a concealed pistol, revolver, dirk, Bowie knife, billy, slingshot, metal knuckles, or other dangerous or deadly weapons. Punishable by forfeiture and “shall be so adjudged.”	Pistol; Revolver; Dirk; Bowie knife; Billy; Slingshot; Metal knuckles; Other dangerous or deadly weapons		
233	1899	Texas – City of San Antonio	Theodore Harris, Charter and Ordinances of the City of San Antonio. Comprising All Ordinances of a General	Prohibited drawing in a threatening manner a pistol, gun, knife, sword cane, club or any other instrument or	Pistol; Gun; Knife; Sword cane;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Character in Force August 7th, at 220 (1899), Ordinances of the City of San Antonio, Ordinances, ch. 22, § 4	weapon that may cause death.	Club; Any other instrument or weapon that causes death		
234	1900	Iowa – City of Des Moines	William H. Baily, The Revised Ordinances of Nineteen Hundred of the City of Des Moines, Iowa, at 89-90, (1900), Ordinances City of Des Moines, Weapons, Concealed, § 209	Prohibited the carrying of a concealed pistol or other firearms, slungshot, brass knuckles, or knuckles of lead, brass or other metal or material, or any sandbag, air guns of any description, dagger, Bowie knife, dirk knife, or other knife or instrument for cutting, stabbing or striking, or other dangerous or deadly weapon.	Pistol; Slungshot; Metal knuckles; Sandbag; Air guns; Dagger; Bowie knife; Instrument for cutting; stabbing or striking; Other dangerous or deadly weapon		
235	1900	New York	1900 N.Y. Laws 459, An Act to Amend Section Four Hundred and Nine of the Penal Code, Relative to Dangerous Weapons, ch. 222, § 1	Prohibited manufacturing or selling a slungshot, billy, sandclub or metal knuckles, and prohibited selling a firearm to a minor in any city or incorporated village without written consent of police magistrate. Exempted any officer of the United States or peace officer when necessary and proper to discharge official duties.	Slungshot; Billy; Sandclub; Metal knuckles; Pistol; Other firearm		
236	1901	Arizona [Territory]	1901 Ariz. 1251-53, §§ 381, 385, 390	Prohibited the concealed carrying of any pistol or other firearm, dirk, dagger,	Pistol; Other firearm; Dirk;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				slungshot, sword cane, spear, brass knuckles, Bowie knife (or any kind of knife, except a pocket knife not manufactured for offensive or defensive use). Exempted peace officers in discharge of official duties. Punishable by a fine of \$25-100 and forfeiture of the weapon.	Dagger; Slungshot; Sword cane; Spear; Metal knuckles; Bowie knife; Any kind of knife (other than pocket knife)		
237	1901	Utah	1901 Utah Laws 97-98, An Act Defining an Infernal Machine, and Prescribing Penalties for the Construction or Contrivance of the Same, or Having Such Machine in Possession, or Delivering Such Machine to Any Person . . . , ch. 96, §§ 1-3	Prohibited the construction and possession of any “infernal machine,” defined as a device with a loaded firearm that is capable of igniting when moved, handled, or opened.	Infernal machine		
238	1903	Oklahoma [Territory]	Wilson’s Rev. & Ann. St. Okla.(1903) § 583, c. 25	Prohibited the concealed carrying of any pistol, revolver, Bowie knife, dirk, dagger, slungshot, sword cane, spear, metal knuckles, or other kind of knife manufactured for defense.	Pistol; Revolver; Bowie knife; Dirk; Dagger; Slungshot; Sword Cane; Spear; Metal knuckles; Other knife		
239	1903	South Dakota	S.D. Rev. Code, Penal Code 1150 (1903) §§ 470, 471	Prohibited the carrying of a concealed slungshot,	Slungshot; Firearm;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				firearm, or sharp or dangerous weapon.	Sharp or dangerous weapon		
240	1905	Indiana	1905 Ind. Acts 677, Public Conveyance—Attacking, § 410	Prohibited maliciously or mischievously shooting a gun, rifle, pistol or other weapon, or throwing a stone, stick, club or any other substance at a vehicle. Punishable by imprisonment for 30 days to 1 year and a fine of \$10-100.	Gun; Rifle; Pistol; Other weapon; Stone; stick; Club; Any other substance		
241	1905	New Jersey	1905 N.J. Laws 324-25, A Supplement to an Act Entitled “An Act for the Punishment of Crimes,” ch. 172, § 1	Prohibited the carrying of a concealed revolver, pistol or other deadly, offensive or dangerous weapon or firearm or any stiletto, dagger or razor. Punishable by fine up to \$200 and/or imprisonment with hard labor up to 2 years.	Revolver; Pistol; Other deadly; offensive or dangerous weapon or firearm or any stiletto; Dagger; razor	<i>State v. Angelo</i> , 3 N.J. Misc. 1014, 1015 (1925) (upheld conceal carry ban)	
242	1908	Rhode Island	1908 (January Session) R.I. Pub. Laws 145, An Act in Amendment of section 23 of chapter 283 of the General Laws, § 23	Prohibited the carrying of any dirk, dagger, razor, sword cane, Bowie knife, butcher knife, air-gun, billy, metal knuckles, slungshot, pistol, other firearm. Exempted officers or watchmen.	Dirk; Dagger; Razor; Sword cane; Bowie knife; Butcher knife; Air gun; Billy; Metal knuckles; Slungshot; Pistol; Other firearm.		



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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
243	1909	Idaho	1909 Id. Sess. Laws 6, An Act To Regulate the Use and Carrying of Concealed Deadly Weapons and to Regulate the Sale or Delivery of Deadly Weapons to Minors Under the Age of Sixteen Years to Provide a Penalty for the Violation of the Provisions of this Act, and to Exempt Certain Persons, § 1	Prohibited the carrying a concealed dirk, Bowie knife, dagger, slungshot, pistol, revolver, gun, or any other deadly or dangerous weapon in any public setting.	Dirk; Bowie knife; Dagger; Slungshot; Pistol; Revolver; Other deadly or dangerous weapon	No longer restricts concealed carrying of a slungshot. <i>See</i> Idaho Stats. Ch. 33, § 18-3302(2)(a)(b)(i).	<i>State v. Hart</i> , 66 Idaho 217 (1945) (upheld under state constitution)
244	1909	South Dakota	1909 S.D. Sess. Laws 450, An Act for the Preservation, Propagation, Protection, Taking, Use and Transportation of Game and Fish and Establishing the Office of State Game Warden and Defining His Duties, ch. 240, §§ 21-22	Prohibited the setting or possession of any “set gun.”	Set gun		
245	1909	Washington	1909 Wash. Sess. Laws 973, An Act Relating to Crimes and Punishments and the Rights and Custody of Persons Accused or Convicted of Crime, and Repealing Certain Acts, ch. 249, ch. 7, §266, pts. 1-3	Prohibited the setting of any trap, spring pistol, rifle, or other deadly weapon. Punishable by imprisonment for up to 1 year or a fine of up to \$1,000. Further punishable by imprisonment for up to 20 years for non-fatal or fatal injuries resulting from the trap or	Trap gun		
246	1911	New York	1911 N.Y. Laws 442, An Act to Amend the Penal	Prohibited the manufacture, sale, giving, or disposing of	Blackjack; Slungshot;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Law, in Relation to the Sale and Carrying of Dangerous Weapons, ch. 195, § 1	any weapon of the kind usually known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, or metal knuckles, and the offering, sale, loaning, leasing, or giving of any gun, revolver, pistol, air gun, or spring-gun to a person under the age of 16.	Billy; Sandclub; Sandbag; Bludgeon; Metal knuckles; Gun; Revolver; Pistol; Air gun; Spring gun		
247	1911	New York	1911 N.Y. Laws 442-43, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons. ch. 195, § 1	Prohibited the carrying or possession of any weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, or bludgeon, and the carrying or possession of any dagger, dirk, dangerous knife, razor, stiletto, or other “dangerous or deadly instrument or weapon” with intent to use the weapon unlawfully against another.	Blackjack; Slungshot; Billy; Sandclub; Sandbag; Metal knuckles; Bludgeon; Dagger; Dirk; Dangerous knife; Razor; Stiletto; Other dangerous or deadly weapon		
248	1912	Vermont	1912 Vt. Acts and Resolves 261	Prohibited the setting of any spring gun. Punishable by a fine of \$50-500 and liability for twice the amount of damage resulting from the trap.	Spring gun		
249	1913	Florida	1913 Fla. 117, An Act to Regulate the Hunting of Wild Deer etc., § 8	Prohibited hunting wild game with automatic guns.	Machine guns		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
250	1913	Hawaii [Territory]	1913 Haw. Rev. Laws ch. 209, § 3089, Carrying Deadly Weapons, § 3089.	Prohibited the carrying a Bowie knife, sword cane, pistol, air-gun, slungshot, or other deadly weapon. Punishable by fine of \$10-250 or imprisonment for 3-12 months, unless good cause can be shown for carrying the weapon.	Bowie knife; Sword cane; Pistol; Air gun; Slungshot; Other deadly weapon		
251	1913	Iowa	1913 Iowa Acts 307, ch. 297, §§ 1, 2	Prohibited the carrying of a concealed dirk, dagger, sword, pistol, revolver, stiletto, metallic knuckles, picket billy, sandbag, skull cracker, slungshot, or other offensive and dangerous weapons or instruments. Also prohibited the selling, keeping for sale, offering for sale, loaning, or giving away any dirk, dagger, stiletto, metallic knuckles, sandbag, or "skull cracker." Exempted the selling or keeping for sale of "hunting and fishing knives."	Dirk; Dagger; Sword; Pistol; Revolver; Stiletto; Metallic knuckles; Picket; Billy; Sand bag; Skull cracker; Slungshot; Other offensive and dangerous weapons or instruments		
252	1913	New York	1913 N.Y. Laws 1627-30, vol. III, ch. 608, § 1, Carrying and Use of Dangerous Weapons Carrying Weapons, Dangerous or Unusual Weapons, § 1	Prohibited the carrying or possession of any weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bludgeon, bomb, or bombshell, and the	Blackjack; Slungshot; Billy; Sandclub; Sandbag; Metal knuckles; Bludgeon;		

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				carrying or possession of any dagger, dirk, dangerous knife, razor, stiletto, or other “dangerous or deadly instruments or weapon.”	Bomb; Bombshell; Dagger; Dirk; Dangerous knife; Razor; Stiletto; Other dangerous or deadly weapon		
253	1915	New Hampshire	1915 N.H. Laws 180-81, An Act to Revise and Amend the Fish and Game Laws, ch. 133, pt. 2, § 18	Prohibited the setting of a spring gun. Punished by a fine of \$50-500.	Spring gun		
254	1915	North Dakota	1915 N.D. Laws 96, An Act to Provide for the Punishment of Any Person Carrying Concealed Any Dangerous Weapons or Explosives, or Who Has the Same in His Possession, Custody or Control, unless Such Weapon or Explosive Is Carried in the Prosecution of a Legitimate and Lawful Purpose, ch. 83, §§ 1-3, 5	Prohibited the concealed carrying of any instrument or weapon usually known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, or any sharp or dangerous weapon, any gun, revolver, pistol, or “other dangerous fire arm,” nitroglycerin, dynamite, or any other dangerous or violent explosive.	Blackjack; Slungshot; Billy; Sandclub; Sandbag; Bludgeon; Metal knuckles; Any sharp or dangerous weapon; Any Gun; Revolver; Pistol; Dangerous firearm; Explosive		
255	1917	California	1917 Cal. Stat. 221, § 1	Prohibited the manufacture, leasing, keeping for sale, offering, giving, or disposing of any instrument or weapon of the kind commonly known as a blackjack,	Blackjack; Slungshot; Billy; Sandclub; Sandbag; Bludgeon;	Repealed and replaced by 1923 Cal. Stat. 695 (1923)	

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, dirk, or dagger.	Metal knuckles; Dirk; Dagger		
256	1917	California	1917 Cal. Stat. 221, § 2	Prohibited the possession of any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, bomb, or bombshells, and the carrying of any dirk or dagger.	Blackjack; Slungshot; Billy; Sandclub; Sandbag; Bludgeon; Metal knuckles; Bomb; Bombshells; Dirk; Dagger	Repealed and replaced by 1923 Cal. Stat. 695 (1923)	
257	1917	California	1917 Cal. Stat. 221, § 5	Prohibited the use, or carrying or possession with the intent to use, any dagger, dirk, dangerous knife, razor, stiletto, loaded pistol, revolver, or other firearm, blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bomb, bombshell, or other “dangerous or deadly instrument or weapon.”	Dagger; Dirk; Dangerous knife; Razor; Stiletto; Loaded pistol; Revolver; Other firearm; Blackjack; Slungshot; Billy; Sandclub; Sandbag; Metal knuckles; Bomb; Bombshell; Other deadly or dangerous weapon	Repealed and replaced by 1923 Cal. Stat. 695 (1923)	

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
258	1917	Missouri – City of Joplin	Joplin Code of 1917, Art. 67, § 1201.	Prohibited the carrying of a concealed firearm, Bowie knife, spring-back knife, razor, knuckles, bill, sword cane, dirk, dagger, slungshot, or other similar deadly weapons in a church, school, election site, court, or other public setting. Also prohibits using the weapon in a threatening manner, using while intoxicated, or selling to a minor.	Firearms; Bowie knife; Spring-back knife; Razor; Knuckle; Billy; Sword cane; Dirk; Dagger; Slungshot; Other deadly weapons		
259	1917	North Carolina – Harnett County	1917 N.C. Sess. Laws 309, Pub. Local Laws, An Act to Regulate the Hunting of Quail in Harnett County, ch. 209, § 1	Prohibited killing quail with a gun that shoots over two times before reloading.	Gun that shoots over two times before reloading (machine gun)		
260	1917	Oregon	1917 Or. Sess. Laws 804-08, An Act Prohibiting the manufacture, sale, possession, carrying, or use of any blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger or stiletto, and regulating the carrying and sale of certain firearms, and defining the duties of certain executive officers, and providing penalties for violation of the provisions of this Act, § 7	Prohibited the attempted use, or the carry and possession with the intent to use, any dagger, dirk, dangerous knife, razor, stiletto, loaded pistol, revolver, or other firearm, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bomb, bombshell, or any other “dangerous or deadly weapon.” Punishable by a fine of \$50-500 or	Dagger; Dirk; Dangerous knife; Razor; Stiletto; Pistol; Revolver; Other Firearm; Blackjack; Slungshot; Billy; Sandclub; Sandbag; Metal knuckles; Bomb;		Oregon v. Blocker, 291 Or. 255 (1981) (struck down the ban on clubs as contrary to Oregon Constitution)

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				imprisonment for 1-6 months.	Bombshell; Other dangerous or deadly weapon		
261	1923	California	1923 Cal. Stat. 695, § 1	Prohibited the manufacture, importation, keeping for sale, offering or exposing for sale, giving, lending, or possession of any instrument or weapon commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, and the concealed carrying of any dirk or dagger. Punishable by imprisonment for 1-5 years.	Blackjack; Slungshot; Billy; Sandclub; Sandbag; Metal knuckles; Dirk; Dagger	Replaced in 1953 with enactment of Cal. Penal Code § 12020	
262	1923	Missouri	1923 Mo. Laws 241-42, An Act to Provide the Exercise of the Police Powers of the State by and through Prohibiting the Manufacture, Possession, Transportation, Sale and Disposition of Intoxicating Liquors. . . § 17	Prohibited the carrying, while a passenger or operating a moving vehicle, of a revolver, gun or other firearm, or explosive, any Bowie knife, or other knife having a blade of more than two and one-half inches in length, any slingshot, brass knucks, billy, club or other dangerous weapon. Punishable by imprisonment of minimum 2 years.	Revolver; Gun; Explosive; Bowie knife; Other knife having a blade of more than two and one-half inches in length; Slingshot; Metal knuckles; Billy; Club; Other dangerous weapon		
263	1923	South Carolina	1923 S.C. Acts 221	Prohibited the selling or giving to a minor a pistol or	Pistol; Pistol cartridge;		



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				pistol cartridge, brass knucks, Bowie knife, dirk, loaded cane or slingshot. Also prohibited a parent from giving such a weapon to their child under 12 years old. Punishable by fine up to \$50 or imprisonment up to 30 days.	Metal knuckles; Bowie knife; Dirk; Loaded cane; Slingshot		
264	1923	Vermont	1923 Vt. Acts and Resolves 127, An Act to Prohibit the Use of Machine Guns and Automatic Rifles in Hunting, § 1	Prohibited using, carrying, or possessing a machine gun or automatic rifle while hunting.	Machine gun; Automatic rifle		
265	1925		1925 Or. Laws 42, An Act Prohibiting the Placing of Spring-Guns or Set-Guns; and Providing a Penalty Therefor, ch. 31, §§ 1-2	Prohibited the setting of any loaded spring gun. Punishable by a fine of \$100-500 or imprisonment for 30 days to 6 months. Exception for setting of trap gun to destroy burrowing rodents.	Spring gun; Set gun		
266	1925	West Virginia	1925 W.Va. Acts 25-30, 1st Extraordinary Sess., An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace; Providing for the Granting and Revoking of Licenses and Permits Respecting the Use, Transportation and	Prohibited unlicensed carrying of a pistol, dirk, Bowie knife, slungshot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapon. Punishable by imprisonment for 6-12 months for the first offense, and for 1-5 years for subsequent offenses, and in	Pistol; Dirk; Bowie knife; Razor; Slungshot; Billy; Metal knuckles; Other dangerous or deadly weapon		<i>City Of Princeton v. Buckner</i> , 180 W. Va. 457, 462 (1988) (held unconstitutional under state constitution); <i>Application of Metheney</i> , 182

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No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Possession of Weapons and Fire Arms. . . , ch. 3, § 7(a)	either case, a fine of \$50-200.			W. Va. 722 (1990)
267	1925	West Virginia	1925 W.Va. Acts 31-32, 1st Extraordinary Sess., An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace . . . , ch. 3, § 7, pt. b	Prohibited publicly displaying for rent or sale any revolver, pistol, dirk, Bowie knife, slungshot, other dangerous weapon, machine gun, submachine gun, or high powered rifle. Requires dealers to keep a register. Prohibited selling, renting, giving, or lending any of these weapons to an unnaturalized person.	Revolver; Pistol; Dirk; Bowie knife; Slungshot; Machine gun; Other dangerous weapon; Submachine gun; High powered rifle		
268	1925	West Virginia	1925 W.Va. Acts 30-31, 1st Extraordinary Sess., An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace; Providing for the Granting and Revoking of Licenses and Permits Respecting the Use, Transportation and Possession of Weapons and Fire Arms . . . , ch. 3, § 7, pt. b	Prohibited carrying, transporting, or possessing a machine gun, submachine gun, or high powered rifle except on their own premises and with a permit. Also provides guidelines for such a permit.	Machine gun; Submachine gun; High powered rifle		
269	1927	California	1927 Cal. Stat. 938, An Act to Prohibit the Possession of Machine Rifles, Machine Guns and Submachine Guns Capable of Automatically and Continuously	Prohibited a person, firm, or corporation possessing a machine gun. Punishable by imprisonment up to 3 years and/or fine up to \$5,000.	Machine gun		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Discharging Loaded Ammunition of any Caliber in which the Ammunition is Fed to Such Guns from or by Means of Clips, Disks, Drums, Belts or other Seperable Mechanical Device, and Providing a Penalty for Violation Thereof, ch. 552, §§ 1 2				
270	1927	Indiana	1927 Ind. Acts 469, Public Offenses—Ownership, Possession or Control of Machine Guns or Bombs—Penalty, ch. 156, § 1	Prohibited owning or possessing a machine gun or bomb in an automobile. Punishable by imprisonment for 1-5 years.	Machine gun; Bomb		
271	1927	Indiana	1927 Ind. Acts 469, Operation of Machine Guns, Discharge of Bombs—Offense and Penalty:, ch. 156, § 2	Prohibited discharging a machine gun or bomb. Punishable by imprisonment for 2-10 years.	Machine gun; Bomb		
272	1927	Iowa	927 Iowa Acts 201, An Act to prohibit the Possession or Control of Machine Guns. . . , §§ 1 2	Prohibited possession of a machine gun.	Machine gun		
273	1927	Maryland	1927 Md. Laws 156, § 388-B	Prohibited possession of liquor in an automobile that also carries a gun, pistol, revolver, rifle machine gun, or other dangerous or deadly weapon.	Gun; Pistol; Revolver; Machine gun; Other dangerous or deadly weapon		
274	1927	Massachusetts	1927 Mass. Acts 416, An Act Relative to Machine	Prohibited the carrying of a pistol, revolver, machine gun, stiletto, dagger, dirk	Pistol; Revolver; Machine gun;		

**Duncan v. Bonta, No. 3:17-cv-01017-BEN-JLB**  
**Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Guns and Other Firearms, ch. 326, § 5	knife, slungshot, metallic knuckles, or sawed off shotgun, billy, or dangerous weapon if arrested upon a warrant for an alleged crime. Punishable by imprisonment of 6 months to 2.5 years.	Stiletto; Dagger; Dirk; Slungshot; Metallic knuckles; Sawed-off shotgun; Billy; Dangerous weapon		
275	1927	Massachusetts	1927 Mass. Acts 413, An Act Relative to Machine Guns and Other Firearms, ch. 326, §§ 1-2 (amending §§ 121, 123)	Prohibited selling, renting, or leasing a pistol, revolver, or machine gun to a person without a license to possess the same.	Pistol; Revolver; Machine gun		
276	1927	Michigan	1927 Mich. Pub. Acts 888-89, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3	Prohibited manufacturing, selling, or possessing a machine gun, silencer, bomb, bombshell, blackjack, slungshot, billy, metallic knuckles, sandclub, bludgeon. Punishable by fine up to \$1,000 or imprisonment.	Machine gun; Silencer; Bomb; Bombshell; Blackjack; Slungshot; Billy; Metallic knuckles; Sandclub; Bludgeon		
277	1927	Michigan	1927 Mich. Pub. Acts 888-89, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3	Prohibited manufacturing, selling, or possessing a machine gun or firearm that can be fired more than 16 times without reloading. Also Prohibited the same for a muffler or silencer. Punishable by fine of \$1,000 and/or imprisonment up to 5 years.	Machine gun; Silencer		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
278	1927	New Jersey	1927 N.J. Laws 742, A Further Supplement to an Act Entitled, "An Act for the Punishment of Crimes," ch. 321, § 1	Prohibited a pawnbroker from selling or possessing for sale, loan, or to give away a machine gun, automatic rifle, revolver, pistol, or other firearm, or other instrument of any kind known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife, stiletto, bomb or other high explosive. Punishable as a high misdemeanor.	Machine gun; Automatic rifle; Revolver; Pistol; Blackjack; Slungshot; Billy; Sandclub; Sandbag; Bludgeon; Metal knuckles; Dagger; Dirk; Dangerous knife; Stiletto; Bomb; Other high explosive		
279	1927	New Jersey	1927 N.J. Laws 180-81, A Supplement to an Act Entitled "An Act for the Punishment of Crimes," ch. 95, §§ 1-2	Prohibited selling, giving, loaning, delivering or furnishing, or possessing a machine gun or automatic rifle to another person without a license.	Machine gun; Automatic rifle		
280	1927	Rhode Island	1927 (January Session) R.I. Pub. Laws 256, An Act to Regulate the Possession of Firearms: §§ 1, 4, 5, 6	Prohibited carrying a concealed pistol and Prohibited manufacturing, selling, purchasing, or possessing a machine gun.	Pistol; Machine gun		
281	1927	Rhode Island	1927 R. I. Pub. Laws 256, An Act to Regulate the Possession of Firearms: §§ 1, 4, 7, 8.	Prohibited carrying a concealed pistol and Prohibited manufacturing, selling, purchasing, or	Pistol; Machine gun; Silencer		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				possessing a machine gun or silencer.			
282	1927	Rhode Island	1927 R.I. Pub. Laws 256, An Act to Regulate the Possession of Firearms, §§1, 3	Prohibited a person who has previously been convicted of a violent crime from owning, carrying, or possessing any firearm (including machine gun or pistol).	Machine gun; Pistol		
283	1929	Indiana	1929 Ind. Acts 139, Criminal Offenses— Commission of or Attempt to Commit Crime While Armed with Deadly Weapon, ch. 55, § 1	Prohibited being armed with a pistol, revolver, rifle shotgun, machine gun, or any other firearm or dangerous weapon while committing or attempting to commit a crime of rape, robbery, bank robbery, or larceny. Punishable by imprisonment for 10-20 years, in addition to the punishment for the original crime.	Pistol; Revolver; Rifle; Shotgun; Machine gun; Dangerous or deadly weapon		
284	1929	Michigan	1929 Mich. Pub. Acts 529, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3	Prohibited manufacturing, selling, or possessing a machine gun, silencer, bomb, bombshell, blackjack, slungshot, billy, metallic knuckles, sandclub, sandbag, bludgeon, or any gas ejecting device.	Machine gun; Silencer; Bomb; Bombshell; Blackjack; Slungshot; Billy; Metallic knuckles; Sandclub, Sandbag, Bludgeon, Gas ejecting device		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
285	1929	Michigan	1929 Mich. Pub. Acts 529, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, § 3	Prohibited manufacturing, selling, or possessing a machine gun or firearm that can be fired more than 16 times without reloading. Also Prohibited the same for a muffler or silencer.	Machine gun; Silencer		
286	1929	Missouri	1929 Mo. Laws 170, Crimes and Punishment, Prohibiting the Sale, Delivery, Transportation, Possession, or Control of Machine Rifles, Machine Guns and Sub-machine Guns, and Providing Penalty for Violation of Law, §§ 1-2	Prohibited selling, delivering, transporting, and possessing a machine gun. Punishable by imprisonment of 2-30 years and/or fine up to \$5,000.	Machine gun		
287	1929	Nebraska	1929 Neb. Laws 674, An Act Prohibiting the Sale, Possession and Transportation of Machine Guns within the State of Nebraska; and Prescribing Penalties for the Violation of the Provisions Hereof, ch. 190, §§ 1-2	Prohibited selling or otherwise disposing of a machine gun. Punishable by fine of \$1,000-\$10,000. Also Prohibited transporting or possessing a machine gun. Punishable by imprisonment for 1-10 years.	Machine gun		
288	1929	Pennsylvania	1929 Pa. Laws 777, An Act prohibiting the sale, giving away, transfer, purchasing, owning, possession and use of machine guns: §§1 4	Prohibited selling, giving, transferring, or possessing a machine gun. Punishable by fine up to \$1,000 and imprisonment by separate or solitary confinement at labor up to 5 years. Also Prohibited using a machine	Machine gun		



***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
				gun during an attempted crime. Punishable by separate and solitary confinement at labor for up to 10 years.			
289	1929	Pennsylvania	1929 Pa. Laws 777, An Act prohibiting the sale, giving away, transfer, purchasing, owning, possession and use of machine guns, § 3	Prohibited being armed with a machine gun while committing a crime. Punishable by imprisonment with solitary confinement up to 10 years.	Machine gun		
290	1929	Wisconsin	1928-1929 Wis. Sess. Laws 157, An Act to Create . . . the Statutes, Relating to Machine Guns and Providing a Penalty, ch. 132, § 1	Prohibited owning, using, or possession a machine gun. Punishable by imprisonment of 1-15 years.	Machine gun		
291	1931	Delaware	1931 Del. Laws 813, An Act Making it Unlawful for any Person or Persons Other than the State Military Forces or Duly Authorized Police Departments to have a Machine Gun in his or their Possession, and Prescribing a Penalty for Same, ch. 249, § 1	Prohibited a person from possessing a machine gun. Punishable by fine and/or imprisonment.	Machine gun		
292	1931	Illinois	1931 Ill. Laws 452-53, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, §§ 1-2	Prohibited selling, loaning, or giving away, purchasing, possessing, carrying, or transporting any machine gun.	Machine gun		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
293	1931	Illinois	1931 Ill. Laws 454, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, § 7	Prohibited being armed with a machine gun while committing arson, assault, burglary, kidnapping, larceny, rioting, or robbery. Punishable by imprisonment for 5 years to life.	Machine gun		
294	1931	Michigan	1931 Mich. Pub. Acts 671, The Michigan Penal Code, ch. 37, § 236	Prohibited the setting of any spring or trap gun.	Spring gun; Trap gun		
295	1931	New York	1931 N.Y. Laws 1033, An Act to Amend the Penal Law in Relation to Carrying and Use of Glass Pistols, ch. 435, § 1	Prohibited using an imitation pistol and carrying or possessing a black-jack, slungshot, billy, sandclub, sandbag, metal knuckles, bludgeon, dagger, dirk, dangerous knife, razor, stiletto, imitation pistol, machine gun, sawed off shot-gun, or any other dangerous or deadly weapon.	Imitation pistol; Blackjack; Slungshot; Metal knuckles; Bludgeon; Dagger; Dirk; Dangerous knife; Razor; Stiletto; Machine gun; Sawed-off shot gun; Other dangerous or deadly weapon		
296	1931	North Dakota	1931 N.D. Laws 305-06, An Act to Prohibit the Possession, Sale and Use of Machine Guns, Sub-Machine Guns, or Automatic Rifles and Defining the Same . . . , ch. 178, §§ 1-2	Prohibited selling, giving, loaning, furnishing, or delivering a machine gun, submachine gun, automatic rifle, or bomb (without a license). Punishable by imprisonment up to 10 years and/or fine up to \$3,000.	Machine gun; Submachine gun; Automatic rifle; Bomb		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
297	1931	South Carolina	1931 S.C. Acts 78, An Act Declaring it unlawful for any person, firm, or corporation to place a loaded trap gun, spring gun, or any like devise in any building, or in any place, and providing punishment for the violation thereof: § 1	Prohibited the setting of any loaded trap gun or spring gun. Punishable by a fine of \$100-500 or imprisonment of 30 days to 1 year.	Trap gun; Spring gun		
298	1932	District of Columbia	District of Columbia 1932: 1932, Public-No. 275-72D Congress, ch. 465	Prohibited being armed with or having readily available any pistol or other firearm while committing a violent crime. In addition to being punished for the crime, will also be punished with imprisonment (various terms depending on the number of previous convictions). Additionally, Prohibited people convicted of violent crimes from owning or possessing a pistol. Prohibited carrying a concealed deadly or dangerous weapon. Regulates the sale and transfer of pistols.	Pistol; Deadly or dangerous weapon		
299	1932	Louisiana	1932 La. Acts 337-38, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, and Providing a	Prohibited selling, loaning, giving, purchasing, possession, carrying, or transporting a machine gun.	Machine gun		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			Penalty for a Violation Hereof . . . , §§ 1 2				
300	1933	California	1933 Cal. Stat. 1169	Prohibited a person, firm, or corporation from selling, possessing or transporting a machine gun. Punishable by imprisonment up to 3 years and/or fine up to \$5,000.	Machine gun		
301	1933	Florida	1933 Fla. Laws 623, An Act to Prevent Throwing of Bombs and the Discharge of Machine Guns Upon, or Across Any Public Road in the State of Florida . . . , ch. 16111, § 1	Prohibited throwing a bomb or shooting a machine gun across or along a street or highway, any public park or place where people assemble with the intent to do bodily harm. Punishable by death.	Bomb; Machine gun		
302	1933	Hawaii	1933 Haw. Special Sess. Laws 117, An Act . . . Regulating The Sale, Transfer And Possession Of Certain Firearms, Tear Gas And Ammunition: § 2	Prohibited a person, firm, or corporation from owning, possessing, selling, or transporting a machine gun, shell cartridge, or bomb containing or capable of emitting tear gas or other noxious gas.	Machine gun; Shell cartridge; Bomb		
303	1933	Kansas	1933 Kan. Sess. Laws 76, An Act Relating to Machine Guns and Other Firearms Making the Transportation or Possession Thereof Unlawful in Certain Cases, Providing for Search, Seizure and Confiscation Thereof in Certain Cases, Relating to the Ownership	Prohibited possession of a machine rifle, machine gun, or submachine gun.	Machine gun		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			and Registration of Certain Firearms, and Providing Penalties for the Violation of this Act, ch. 62, §§ 1 3				
304	1933	Minnesota	1933 Minn. Laws 231-33, An Act Making It Unlawful to Use, Own, Possess, Sell, Control or Transport a “Machine Gun”, as Hereinafter Defined, and Providing a Penalty for the Violation Thereof, ch. 190, §§ 1-3	Prohibited owning, controlling, using, possessing, selling, or transporting a machine gun.	Machine gun		
305	1933	New York	1933 N.Y. Laws 1639, An Act to Amend the Penal Law, in Relation to the Sale, Possession and Use of Sub-Machine Guns, ch. 805, §§ 1, 3	Prohibited selling, giving, disposing of, transporting, or possessing a machine gun or submachine gun to a person guilty of a felony.	Machine gun		
306	1933	Ohio	1933 Ohio Laws 189-90, Reg. Sess., An Act. . . Relative to the Sale and Possession of Machine Guns, § 1	Prohibited owning, possessing, and transporting a machine gun, light machine gun, or submachine gun without a permit. Punishable by imprisonment of 1-10 years.	Machine gun; Light machine gun; Submachine gun		
307	1933	Oregon	1933 Or. Laws 489, An Act to Amend Sections 72-201, 72-202, 72-207, Oregon Code 1930, ch. 315, §§ 3-4	Prohibited possession of a machine gun. Also Prohibited carrying a concealed machine gun, pistol, revolver, or other firearm.	Machine gun; Pistol; Revolver; Other firearm		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
308	1933	Oregon	1933 Or. Laws 488, An Act to Amend Sections 72-201, 72-202, 72-207, Oregon Code 1930, § 2	Prohibited a unnaturalized person and person convicted of a felony against another person or the government from owning or possessing a pistol, revolver, other firearm, or machine gun. Punishable by imprisonment for 1-5 years.	Pistol; Revolver; Other firearm; Machine gun		
309	1933	South Dakota	1933 S.D. Sess. Laws 245-47, An Act Relating to Machine Guns, and to Make Uniform the Law with Reference Thereto, ch. 206, §§ 1-8	Prohibited possession of a machine gun during a violent crime. Punishable by imprisonment up to 15 years. Prohibited using a machine gun offensively or aggressively; punishable by imprisonment up to 15 years. Requires manufacturers to keep a register of machine guns and for owners to converted their machine guns to pistols to register the weapon.	Machine gun		
310	1933	Texas	1933 Tex. Gen. Laws 219-20, 1st Called Sess., An Act Defining “Machine Gun” and “Person”; Making It an Offense to Possess or Use Machine Guns. . . , ch. 82, §§ 1-4, 6	Prohibited possession of a machine gun; punishable by imprisonment up to 10 years. Prohibited selling, leasing, giving, bartering, exchanging, or trading a machine gun; punishable by imprisonment for 2 months to 10 years.	Machine gun		

***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
311	1933	Washington	1933 Wash. Sess. Laws 335-36, An Act Relating to Machine Guns, Regulating the Manufacture, Possession, Sale of Machine Guns and Parts, and Providing Penalty for the Violation Thereof, and Declaring an Emergency, ch. 64, §§ 1-5	Prohibited manufacturing, owning, buying, selling, loaning, furnishing, transporting, or possessing a machine gun.	Machine gun		
312	1934	New Jersey	1934 N.J. Laws 394-95, A Further Supplement to an Act Entitled “An Act for the Punishment of Crimes,” ch. 155, §§ 1-5	Declares a person who possesses a machine gun or submachine gun a “gangster” and therefore, enemy of the state. Also declares a person who carries a deadly weapon without a permit a “gangster.” If convicted a “gangster,” punishable by fine up to \$10,000 and/or imprisonment up to 20 years.	Machine gun; Submachine gun; Deadly weapon		
313	1934	South Carolina	1934 S.C. Acts 1288, An Act regulating the use and possession of Machine Guns: §§ 1 to 6	Prohibited transporting, possessing, selling, renting, or giving a firearm or machine gun. Punishable by fine up to \$1,000 and imprisonment with solitary confinement up to 20 years.	Firearm; Machine gun		
314	1934	Virginia	1934 Va. Acts 137-39, An Act to define the term “machine gun”; to declare the use and possession of a machine gun for certain	Prohibited possession or use of a machine gun during a violent crime; punishable by death or imprisonment for a minimum of 20 years.	Machine gun		



***Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB  
Defendant's Survey of Relevant Statutes (1889–1930s)**

No.	Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation	Repeal Status	Judicial Review
			purposes a crime and to prescribe the punishment therefor, ch. 96, §§ 1-7	Prohibited unlawful possession or use of a machine gun for offensive or aggressive purposes; punishable by imprisonment for a minimum of 10 years. Requires manufacturers to keep a register of machine guns.			
315	1931-1933	Wisconsin	1931-1933 Wis. Sess. Laws 245-47, An Act . . . Relating to Machine Guns and to Make Uniform the Law with Reference Thereto, ch. 76, § 1, pt. 164.01-164.06	Prohibited using or possessing a machine gun during an attempted violent crime; punishable by imprisonment of minimum 20 years. Prohibited use of a machine gun for offensive or aggressive purposes; punishable by imprisonment of minimum 10 years.	Machine gun		
316	1931-1933	Wisconsin	1931-1933 Wis. Sess. Laws 778, An Act . . . Relating to the Sale, Possession, Transportation and Use of Machine Guns and Other Weapons in Certain Cases, and Providing a Penalty, ch. 359, § 1	Prohibited selling, possessing, using, or transporting a machine gun, automatic firearm, bomb, hand grenade, projectile, shell, or other container that can contain tear or other gas. Punishable by imprisonment for 1-3 years.	Machine gun; Automatic firearm; Bomb; Hand grenade; Projectile; Shell; Other container that can contain gas		

## **EXHIBIT 17**

## **Deposition of Stephen C. Helsley**

**Oregon Firearms Federation, Inc., et al. v. Brown, et al.**

**January 19, 2023**



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Oregon Firearms Federation, Inc., et al. v. Brown, et al.

Stephen C. Helsley

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

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OREGON FIREARMS FEDERATION,	)	
INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	Case Nos.
v.	)	2:22-cv-01815-IM
	)	3:22-cv-01859-IM
KATE BROWN, et al.,	)	3:22-cv-01862-IM
	)	3:22-CV-01869-IM
Defendants.	)	
	)	
	)	
	)	
(Continued)	)	

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\* VIDEOCONFERENCE \*

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION  
OF EXPERT  
STEPHEN C. HELSLEY

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Witness located in:  
El Dorado Hills, California

\* All participants appeared via videoconference \*

DATE TAKEN: January 19, 2023

REPORTED BY: Tia B. Reidt, Washington RPR, CSR #2798  
Oregon #22-0001

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Ex. 1\_Echeverria Decl.

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Oregon Firearms Federation, Inc., et al. v. Brown, et al.

Stephen C. Helsley

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1 (Continued) )  
2 MARK FITZ, et al., )  
3 Plaintiffs, )  
4 v. )  
5 ELLEN F. ROSENBLUM, et al., )  
6 Defendants. )  
7 KATERINA B. EYRE, et al., )  
8 Plaintiffs, )  
9 v. )  
10 ELLEN F. ROSENBLUM, et al., )  
11 Defendants. )  
12 DANIEL AZZOPARDI, et al., )  
13 Plaintiffs, )  
14 v. )  
15 ELLEN F. ROSENBLUM, et al., )  
16 Defendants. )

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Ex. 1\_Echeverria Decl.

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\* \* \* \* \*

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Stephen C. Helsley

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Mr. Pekelis	85
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EXHIBIT 28	Declaration of Massad Ayoob in Support of Plaintiffs' Motion For Preliminary Injunction; Exhibits A-C.	67

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Oregon Firearms Federation, Inc., et al. v. Brown, et al.

Stephen C. Helsley

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1 El Dorado Hills, California; Thursday, January 19, 2023

2 1:49 p.m.

3 -o0o-

4  
5 THE VIDEOGRAPHER: Good afternoon.

6 This is the deposition of Stephen Helsley in  
7 the matter of Oregon Firearms Federation, Inc. et al.  
8 v. Brown et al., Case Numbers 2:22-cv-01815-IM,  
9 3:22-cv-01859-IM, 3:22-cv-01862-IM, and  
10 3:22-CV-01869-IM in the United States District Court  
11 for the District of Oregon and was noticed by Markowitz  
12 Herbold.

13 The time now is approximately 1:50 p.m. on  
14 this 19th day of January 2023, and we are convening via  
15 Buell virtual depositions.

16 My name is Cathy Zak from Buell Realtime  
17 Reporting, LLC, located at 1325 4th Avenue, Suite 1840,  
18 in Seattle, Washington 98101.

19 Will counsel please identify themselves for  
20 the record.

21 MR. WILSON: Harry Wilson, special  
22 assistant Attorney General for the state of Oregon for  
23 defendants.

24 MR. WILLIAMSON: Leonard Williamson for  
25 plaintiffs OFF here in Oregon.

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Ex. 1\_Echeverria Decl.

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1 MR. PEKELIS: Zach Pekelis for intervenor  
2 defendant Oregon Alliance for Gun Safety, and I'm in  
3 Seattle, Washington.

4 THE WITNESS: And Steve Helsley, witness.

5 THE VIDEOGRAPHER: Thank you.

6 The court reporter may now swear in the  
7 witness.

8 THE COURT REPORTER: Can I please get a  
9 stipulation from counsel to swear in the witness, as  
10 I'm a Washington State court reporter and notary, and  
11 the witness is in California?

12 MR. WILSON: So stipulated.

13 MR. WILLIAMSON: So stipulated.

14 MR. PEKELIS: Same.

15  
16 STEPHEN C. HELSLEY,

17 Having been first duly sworn by the  
18 Certified Court Reporter, was deposed as follows:

19  
20 EXAMINATION

21 BY MR. WILSON:

22 Q. Good afternoon, Mr. Helsley. My name is Harry  
23 Wilson. As you just heard, I am an attorney for the  
24 state of Oregon.

25 Could we begin today by having you state your

1 full name for the record?

2 A. Yes. It's Steven, S-T-E-P-H-E-N; Craig,  
3 C-R-A-I-G; Helsley, H-E-L-S-L-E-Y.

4 Q. Mr. Helsley, do you understand that the oath  
5 that you just took is the same oath that you would take  
6 if we were in a courtroom?

7 A. I do.

8 Q. Do you understand that this deposition is  
9 being transcribed by a court reporter?

10 A. I do.

11 Q. And do you also understand that this  
12 deposition is being recorded by audio and video?

13 A. I do.

14 Q. Do you understand that we may be able to  
15 playback that video or read from the transcript at a  
16 hearing or a trial on this matter?

17 A. I do.

18 Q. Okay.

19 This afternoon I'm going to ask you a series  
20 of questions in this deposition. And unless you tell  
21 me that you don't understand my question, I will assume  
22 that you've understood it.

23 Does that make sense?

24 A. It does.

25 Q. Mr. Helsley, is there anything that would

1 prevent you from thinking clearly today?

2 A. No.

3 Q. Is there anything that would prevent you from  
4 testifying truthfully today?

5 A. No.

6 Q. As we go through the questions, please feel  
7 free to -- if there comes a point, you know, in the  
8 next few hours that you would like to take a break,  
9 just let me know, and I would be happy to go off the  
10 record and do that. Just so you know, if there's a  
11 question pending, I will ask that you answer that  
12 question before we take the break.

13 Make sense?

14 A. I understand.

15 Q. Okay.

16 Mr. Helsley, is it correct that presently you  
17 are a retired peace officer from the California  
18 Department of Justice?

19 A. That is correct.

20 Q. And about how many years did you serve as a  
21 peace officer for the California Department of Justice?

22 A. 26 years.

23 Q. Did you serve exclusively within the state of  
24 California?

25 A. I did.

1 The time is 3:42 p.m.

2 BY MR. WILSON:

3 Q. Welcome back, Mr. Helsley.

4 So I'm still on your report. At this time, I  
5 would like to take a look -- go to page 13.

6 A. Got it.

7 Q. And in the middle of that page, there's a  
8 number 2, and then it says in italics "Limiting the  
9 law-abiding citizen to a magazine of ten rounds limits  
10 their ability  
11 to protect themselves from violent criminals in certain  
12 situations. Such limits on magazine capacity are  
13 likely to impair the ability of citizens to engage in  
14 lawful self-defense in those crime incidents  
15 necessitating that the victim fire many rounds to stop  
16 the aggressive actions of offenders, while having  
17 negligible impact on the ability of criminals to carry  
18 out violent crimes."

19 Mr. Helsley, did you write that sentence --  
20 those two sentences yourself?

21 A. As best I can recall, I did.

22 Q. And then there follows on, after that 2,  
23 page 14 through to page 15, a number of paragraphs  
24 discussing the use of firearms in self-defense  
25 situations.

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1 Did you write those paragraphs yourself?

2 A. Let me see the -- the paragraphs on page 14?

3 Q. Yes.

4 A. Well, if I didn't write something, I would  
5 have put quotes on it and attributed it, so I don't --  
6 I don't remember this specifically. But again, if --  
7 if it's not mine, I would have quoted it.

8 MR. WILSON: I'd like to introduce an  
9 exhibit now. And I'll put it in the chat. I'm also  
10 going to email it around.

11 Leonard, I don't have the witness's email  
12 address, and I'm just going to send it to you. And so  
13 after I hit send here, maybe we can go off the record  
14 for a minute while we work on getting that exhibit on  
15 screen?

16 So I'm hitting send now.

17 THE VIDEOGRAPHER: Would you like to go  
18 off the record now?

19 MR. WILSON: And, yes, let's go off the  
20 record. Thank you.

21 THE VIDEOGRAPHER: Going off the record.

22 The time is 3:45 p.m.

23 (Pause in the proceedings.)

24 THE VIDEOGRAPHER: We are back on the  
25 record.

1           The time is 3:52 p.m.

2       BY MR. WILSON:

3           Q.   Okay.

4           Mr. Helsley, we are marking what is  
5       Exhibit 28, and I'll let the court reporter do that.

6                       (Exhibit 28 marked for identification.)

7           THE COURT REPORTER:   Exhibit 28 has been  
8       marked.

9       BY MR. WILSON:

10          Q.   And then Mr. Helsley, Exhibit 28 should be  
11       what you are looking at in front of you on your phone.  
12       And if you would just tell me, does the first  
13       page appear to be a court document captioned  
14       "Declaration of Massad Ayoob in Support of Plaintiff's  
15       Motion for Preliminary Injunction Exhibits A through  
16       C"?

17          A.   No.

18          Q.   What do you see?

19          A.   The document that I just opened up is, I  
20       think, the same one that I got before.  It starts off  
21       with Stephen J. Joncus, OSB Number 013072.

22          Q.   Okay.

23                I think -- I think you're probably looking at  
24       your expert report.

25          A.   Yes, I am.  But that's the one I just -- that



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1 I just -- oh, wait one minute. No. That's -- oh,  
2 shame on me. I didn't scroll down far enough.

3 Okay. Now I've got it.

4 Q. Okay.

5 So what you're looking at says "Declaration of  
6 Massad Ayooob"?

7 A. Correct.

8 Q. Okay.

9 So that has been marked as Exhibit 28.

10 And then Exhibit 27 is your expert report.  
11 And I'm going to put that on the Zoom screen, and I  
12 just want you to confirm that that is, in fact, what  
13 you see when I put it on the screen. So give me just a  
14 second.

15 Okay. Do you see on the screen  
16 "Declaration" --

17 A. I do.

18 Q. -- "of Stephen Helsley"?

19 Okay.

20 A. Wait.

21 Yeah.

22 Oops. Yes.

23 Q. Great. Okay.

24 So Mr. Helsley, we were just discussing  
25 Section 2 of your report on page 13, and I'm scrolling

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1 down to that. And you'll see on the screen I'm just  
2 putting some highlighting.

3 A. Mm-hm.

4 Q. Do you see that?

5 A. Yes, I do.

6 Q. Okay.

7 Is that the section from your report that we  
8 just read?

9 A. Yes, it is.

10 Q. Okay.

11 Now Mr. Helsley, could you, on your phone, on  
12 Exhibit 28, scroll to the second page of the  
13 declaration of Massad Ayoob and look at the bottom of  
14 that page, paragraph 5 at the very bottom, and tell me  
15 when you get there.

16 A. On what -- what page this is?

17 Q. On page 2, paragraph 5.

18 A. Page 2. Page 2, paragraph -- got it.

19 Q. So paragraph 5 of Exhibit 28 of Mr. Ayoob's  
20 declaration states "Limiting the law-abiding citizen to  
21 a magazine of ten rounds or less will clearly limit  
22 their ability to protect themselves from violent  
23 criminals in certain situations. Such limits on  
24 magazine capacity are likely to impair the ability of  
25 citizens to engage in lawful self-defense in those

1 crime incidents, necessitating that  
2 the victim fire many rounds in order to stop the  
3 aggressive actions of offenders."

4 Mr. Helsley, would you agree that that  
5 language in paragraph 5 of Mr. Ayooob's declaration is  
6 nearly identical to the language in Section 2 of your  
7 declaration?

8 A. Let me see here. "Limiting --" (witness  
9 mumbling/reading.)

10 Yes. It is for about the first half of it,  
11 yes.

12 Q. Mr. Helsley, do you know Mr. Ayooob?

13 A. I do not.

14 Q. Have you ever had a conversation with him?

15 A. No.

16 Q. Mr. Helsley, did you copy your language in  
17 your expert report from Mr. Ayooob's report here in  
18 front of you?

19 A. I don't think so. I certainly am not inclined  
20 to do that sort of a thing. I don't recall doing it.  
21 I don't think I did it.

22 Q. Mr. Helsley, if you look back to your  
23 report -- and I'm going to scroll down here -- you'll  
24 see that I'm going to highlight this paragraph that  
25 begins "Likewise."

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1 A. Mm-hm.

2 Q. That is a paragraph in your expert report;  
3 correct?

4 A. Let me see.

5 Yeah.

6 Q. And then if you could, on Mr. Ayooob's report,  
7 please scroll to page 8, paragraph 18.

8 A. Page 8, paragraph 18.

9 Got it.

10 Q. Okay.

11 So the paragraph in Exhibit 27, which is your  
12 report, states "Likewise, the average homeowner who  
13 keeps a defensive firearm is unlikely to have time to  
14 gather spare ammunition or magazines."

15 In Mr. Ayooob's report, paragraph 18 states  
16 "The homeowner who keeps a defensive firearm and is  
17 awakened in the night by an intruder is most unlikely  
18 to have time to gather spare ammunition."

19 And then both paragraphs continue on until the  
20 end of the paragraph.

21 Would you agree that the language in these two  
22 paragraphs is almost but not entirely identical?

23 A. They're similar.

24 Q. For example, in the paragraph in your report  
25 you wrote "Ideally, one hand would be occupied with the

1 handgun and the other with a telephone to call police."

2 And in Mr. Ayooob's report, it states "Ideally,  
3 one hand would be occupied with the handgun itself, and  
4 the other, with a telephone to call the police."

5 Do you agree that those are nearly identical?

6 A. Yes.

7 Q. So I guess my same question. Did you copy  
8 your report from Mr. Ayooob's report?

9 A. Well, I don't -- I don't know that I ever saw  
10 his report. Again, I'm not sure of the time sequence  
11 as to when I prepared this, but I don't -- I don't know  
12 him, and I don't -- I don't recall seeing a report from  
13 him, but they're clearly similar.

14 Q. Mr. Helsley, if you'd go to page 15 of  
15 Mr. Ayooob's report. And just to help you find it,  
16 page 15 is Mr. Ayooob's signature page.

17 A. Okay. I'm getting there.

18 Yeah.

19 Q. And do you see that it's dated May 19th, 2017?

20 A. Yes.

21 Q. Your report, in contrast, on page 17, it's  
22 dated December 20th, 2022; is that correct?

23 A. Yes.

24 Q. Is it fair to say that you created your report  
25 after Mr. Ayooob signed and filed this report?

1 A. It seems like it, yes.

2 Q. If you look at page 14 of your report, at the  
3 top of the page, and I've scrolled to it here just so  
4 you can see, beginning "The off-duty officer and the  
5 private law-abiding citizen are thus unlikely to have  
6 much, if any, spare ammunition on their person or  
7 elsewhere readily accessible."

8 If you could also scroll to page 11 of  
9 Mr. Ayoob's report, paragraph 27, please.

10 A. Page 11. Got it.

11 Q. You'll see that paragraph 27 of Mr. Ayoob's  
12 report also begins "The off-duty officer and the  
13 law-abiding citizen alike are not likely to have that  
14 volume of spare ammunition on their person or elsewhere  
15 readily  
16 accessible."

17 Would you agree that paragraph 27 of  
18 Mr. Ayoob's report and the paragraph of your report  
19 that begins "The off-duty officer" are nearly  
20 identical?

21 A. Yes.

22 Q. I'm now looking at the paragraph beginning  
23 "Criminals bent on causing harm" in your report.  
24 That's paragraph 27. And I'm on page 8, paragraph 20  
25 of Mr. Ayoob's report.

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1           Would you please compare the first three  
2 sentences of the paragraph in your report, and I'll  
3 highlight them for you, to the sentences in paragraphs  
4 20 and 21 in Mr. Ayooob's report?

5           Would you agree they are nearly identical?

6           A. Yes.

7           Q. The paragraph beginning "The virtuous citizen"  
8 in your report appears to be nearly identical to the  
9 paragraph beginning -- or the paragraph numbered Number  
10 24 in Mr. Ayooob's report, which also begins with the  
11 words "The virtuous citizen."

12           And it's my same question: Are those  
13 paragraphs nearly identical?

14           A. Yes.

15           Q. The paragraph beginning "Supporters of the  
16 magazine capacity limitation" in your report appears to  
17 be identical to the paragraph numbered paragraph 30 in  
18 Mr. Ayooob's report.

19           Would you agree that those paragraphs are  
20 nearly identical?

21           A. Yes.

22           Q. And then there's a paragraph that starts  
23 "Finally, it's worth noting," in Exhibit 27, that's  
24 your report. And I ask that you compare that to  
25 paragraph 11 of Mr. Ayooob's report and tell me whether



1 you believe that those paragraphs are nearly identical.

2 A. You said 11 in his?

3 Q. Mm-hm. Yes.

4 A. Paragraph 11. Which paragraph is -- am I  
5 comparing it with on the screen?

6 Q. The paragraph beginning --

7 A. "Finally"?

8 Q. -- "Finally, it is worth noting."

9 A. This 11 on my computer is "It is difficult to  
10 say exactly."

11 So am I supposed to be on page 4?

12 Q. Yes. Page 4 of Exhibit 28, Mr. Ayooob's  
13 report, paragraph 11, beginning "It is difficult to say  
14 exactly."

15 A. I just don't see it on my cell phone here.

16 My 11 says "It is difficult to say exactly how  
17 many private citizens."

18 Oh, there -- okay. There -- there it is.

19 "Finally..." (witness mumbling/reading.)

20 Yes.

21 Q. Mr. Helsley, we've been discussing the  
22 paragraphs in your report under Section 2, which began  
23 with the italicized words "Limiting the law-abiding  
24 citizen" and which began on page 13 and have run all  
25 the way through page 15 of your report.

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1 When did you write these paragraphs?

2 A. That's a -- that's a very good question. I  
3 don't know.

4 This was a document, I believe, that I'd  
5 written in the main part for a California case, and  
6 then I was requested to become involved in the Oregon  
7 case. And I just -- I -- I don't remember when it  
8 was -- when I wrote it, primarily because the last  
9 three or so years have been a blur because I've been  
10 hospitalized and all sorts of surgeries and things. I  
11 just believe that I wrote this principally some years  
12 ago, but I don't know when exactly I wrote it.

13 Q. You mentioned that the -- in the last several  
14 years that you've undergone some hospitalizations. And  
15 let me just say I'm sorry to hear that and I hope that  
16 your health is improved and you feel like you're in  
17 good shape.

18 My question is, is it -- is it possible that  
19 during that period, you copied the words of Mr. Ayoob  
20 at some point, and they have now been submitted as part  
21 of your report, but they are not, in fact, your  
22 original opinion and work?

23 A. Well, I -- I would have written it before I  
24 had the medical problems like in the area of, you know,  
25 2017. But I'm just saying I can't -- some of this

1 stuff is a blur.

2 I know that these things represent my  
3 opinions. I've just never copied the works of other  
4 folks. It's certainly -- there's certainly a strong  
5 comparison. But I don't think when I wrote it because  
6 I don't remember the sequence of events, because the --  
7 the attorney that I worked with in California, I've  
8 done a lot of work there. And the attorney here asked  
9 permission of them to use some of the work that I had  
10 done, and I updated it, I thought. But beyond that, I  
11 just can't say.

12 MR. WILLIAMSON: Counsel?

13 MR. WILSON: Go ahead.

14 MR. WILLIAMSON: Yeah. Can we go off the  
15 record for a moment?

16 MR. WILSON: Sure.

17 THE VIDEOGRAPHER: Going off the record.

18 The time is 4:12 p.m.

19 (Pause in the proceedings.)

20 THE VIDEOGRAPHER: We are back on the  
21 record.

22 The time is 4:15 p.m.

23 MR. WILSON: Mr. Williamson, would you  
24 like to make a statement on the record?

25 MR. WILLIAMSON: Yes.

1           So as I've been listening to the direct  
2 examination of Mr. Helsley, it occurred to me in  
3 looking at the Exhibit 1, Helsley Exhibit 1, as counsel  
4 scrolled through it, it looked unfamiliar to me in  
5 certain sections of it that I specifically discussed  
6 with Mr. Helsley on the phone and then updated and  
7 changed and sent the approved exhibit to my support  
8 staff to attest his declaration and final filing with  
9 the court.

10           And I'm looking back at my email from December  
11 29th to my legal assistant with the updated exhibit  
12 attached to it. I've compared it to the one that's  
13 filed with the court and attached to his declaration,  
14 and it's the wrong one. It simply looks like a copy of  
15 the one that was filed in the California case in 2017.

16           MR. WILSON: Okay.

17 BY MR. WILSON:

18           Q. With that statement made by Mr. Waters,  
19 Mr. Helsley, I'm going to follow up with a couple  
20 questions. Okay?

21           A. Very good.

22           Q. First of all, your lawyer has just made a  
23 statement on the record that he believes that the wrong  
24 exhibit may have been filed in this case.

25           The document that we have on the screen, which

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1 is Exhibit 27, and I'm scrolling to the top here, is  
2 titled "Expert Witness Report of Steven Helsley, Oregon  
3 Firearms Federation, Inc., et al., v. Brown et al."

4 Earlier we talked about whether this was a  
5 report you believe that you created.

6 Do you still believe that this is a report  
7 that you created and you wrote?

8 A. Correct.

9 Q. And then at the -- I'm scrolling down to the  
10 end of it. You'll see this is on page 17 of  
11 Exhibit 27. It's dated December 20th, 2022. There's a  
12 signature.

13 And as we discussed earlier, that is your  
14 signature; correct?

15 A. Correct.

16 Q. Do you have a recollection of executing this  
17 report on December 20th, 2020?

18 A. I have a recollection of the January 2nd  
19 because something was emailed to me on the 30th or  
20 29th, and I couldn't get to it. And then we had to  
21 change the date because it had rolled over to '23. I  
22 remember that.

23 The reason that I don't remember specifically  
24 is because I've had a number of these California,  
25 Washington DC, Oregon, where I've been sending things

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1 back and forth, and I don't remember this specifically.

2 Q. Before you append your signature to a document  
3 to be filed in court, do you review that document  
4 carefully?

5 A. Yes. And I had reviewed this one. I wasn't  
6 clear as to what the relevance was to this case because  
7 I had written the first part of this, and  
8 Mr. Williamson and I had discussed that.

9 And then it seemed to me that all of a sudden,  
10 the second half appeared. And I just assumed that, you  
11 know, everybody knew what they were doing and that was  
12 supposed to be part of the package.

13 Q. So is it your testimony that you did not  
14 review the second half of the report to confirm that it  
15 was your own work?

16 A. No, no. It -- I didn't know whether the  
17 second half of the report was something that was going  
18 to be -- that was relevant to this case.

19 Q. So is it your testimony that the second half  
20 of the report -- and I think when we say "second half  
21 of the report," what we mean is Exhibit Helsley-1 --  
22 that you are referring to the portion that begins on  
23 page 9; correct?

24 A. Yes.

25 Q. Does it remain your testimony that the second

1 half of the report is entirely your own work?

2 A. Best I can recall, yes.

3 Q. And do you have -- can you account for why it  
4 is that many of the paragraphs in this report appear to  
5 be identical or nearly identical to paragraphs in  
6 Mr. Ayoob's report?

7 A. I cannot.

8 Q. Given the similarity between the paragraphs in  
9 Mr. Ayoob's declaration and in your report, can you say  
10 confidently that the court can fairly rely on your  
11 expert work in -- what you've submitted here as your  
12 own product?

13 A. When you say what I've submitted here, you're  
14 now referring to Part 1 and Part 2?

15 Q. Why don't I withdraw that question and try to  
16 ask it in a better way.

17 Mr. Helsley, can you say with confidence that  
18 the portion of your expert report beginning on page 9  
19 and continuing on through the end is your work with  
20 enough confidence to ask the court to rely on it?

21 A. Well, if the -- if the issue is the content, I  
22 clearly agree on the content.

23 If your question is solely about did I author  
24 it, content aside, well, you know, as best I can  
25 recall, I did. But if I wrote this, which I think I



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1 did, it was years ago, I think. I think this was -- I  
2 think this was, for the most part, written probably in  
3 2017.

4 Q. So you can't remember exactly when it was you  
5 created this second portion of your report?

6 A. I can remember -- no. Well, the second  
7 portion being Part 1, as I see it, yeah, I remember  
8 that specifically because Mr. Williamson and I  
9 discussed that because I was on a very short timeline  
10 to produce that because I got pulled into this, I want  
11 to say, mid-December, and it's -- I think this may have  
12 been -- the second half now that we're comparing with  
13 what Massad did, this may have been something to do  
14 with the Duncan case. And if it is, then I've already  
15 been deposed extensively on that report.

16 Q. I just want to kind of make sure I fully  
17 understand what we've talked about over the last few  
18 minutes.

19 Is it your testimony that you are not entirely  
20 confident that you are the original author of portions  
21 of your report beginning on page 9, which is on the  
22 screen in front of you, and continuing to the end?

23 A. Well, as to confidence, I can't say because I  
24 just don't remember. Again, I think this was written  
25 some time ago. It's probably why I don't remember it.

1 But it's just not my style to copy things  
2 without attributing them. And I just -- I don't know.  
3 I don't think so.

4 Q. So you don't know -- you don't know for sure,  
5 but you don't think so?

6 A. Correct.

7 I don't know for sure because I simply don't  
8 remember. It's too long ago.

9 Q. Mr. Helsley, when was the last time you went  
10 to The SHOT Show?

11 A. Went where?

12 Q. The SHOT Show.

13 A. Probably, oh, 15 years ago.

14 Q. Gotcha.

15 And when was the last time you saw Andrei  
16 Ugarov in person?

17 A. I saw him -- I saw him in 2011 or '12 in  
18 person. And then I saw him, I think, in 2015.

19 Q. Did you see him when you were in Russia in  
20 2020?

21 A. Yes. I stayed with him at his house.

22 Q. So you saw him in 2020. Is that --

23 A. Oh, no. No, no. I saw him -- I stayed with  
24 him, I believe it was, in 2009 or '10 at his home in  
25 Moscow.

1 Q. Where did you stay in Russia in 2020?

2 A. I wasn't there that year. I was there in '17  
3 and, I believe, in '10.

4 Q. Okay. I'm sorry. I must have written  
5 something down wrong.

6 I understand you took an anniversary trip one  
7 year?

8 A. Yes, in '17.

9 Q. In '17. Okay.

10 Where did you stay in 2017?

11 A. We were on a cruise, and so we -- we stayed on  
12 the ship, and then we, you know, got on a bus and  
13 toured around.

14 MR. WILSON: Okay. I have no further  
15 questions at this time. We -- the state -- the  
16 defendants will want to keep this deposition open  
17 pending any changes that are made to the declaration.  
18 Of course, we reserve all rights to challenge,  
19 depending on what gets filed and what gets done.  
20 Thanks.

21 THE COURT REPORTER: Any questions from  
22 other counsel?

23 MR. PEKELIS: Yeah. I have some  
24 questions.

25 And Mr. Helsley, my name is --

1 Can we take the declaration down?

2 MR. WILSON: Yeah. Just a second, and I  
3 will do that.

4

5 EXAMINATION

6 BY MR. PEKELIS:

7 Q. Good afternoon, Mr. Helsley. My name is Zach  
8 Pekelis, and I'm the attorney for intervenor defendant  
9 Oregon Alliance For Gun Safety in this case.

10 And given the uncertainties about your report  
11 and what the correct version is, I'm not going to ask  
12 you about that at all, and we're just going to wait  
13 until we have whatever the intended correct final  
14 version of it is. And like defendants, we'll reserve  
15 the right to reopen or keep open the deposition.

16 All the ground rules and principles that were  
17 discussed by defendant's counsel earlier today,  
18 Mr. Wilson, still apply.

19 Does that make sense?

20 A. Yes.

21 Q. What did you do to prepare for today's  
22 deposition?

23 A. Nothing in particular.

24 Q. So I take it you did not read the declaration  
25 that you submitted in this case before today's

Oregon Firearms Federation, Inc., et al. v. Brown, et al.

Stephen C. Helsley

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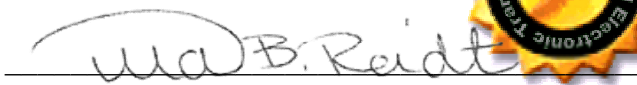
C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Tia Reidt, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the deposition of STEPHEN C. HELSLEY, having been duly sworn, on January 19, 2023, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of January, 2023.





/S/ Tia B. Reidt  
Tia B. Reidt, RPR, CSR Oregon #22-0001  
NOTARY PUBLIC, State of  
Washington.  
My commission expires  
5/15/2026.

BUELL REALTIME REPORTING, LLC  
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Ex. 1\_Echeverria Decl.

## **EXHIBIT 18**

## **Deposition of Stephen Helsley - Vol. II**

**Oregon Firearms Federation, Inc., et al. v. Brown, et al.**

**January 30, 2023**



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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

---

OREGON FIREARMS FEDERATION,	)	
INC., et al.,	)	
	)	
Plaintiffs,	)	Case Nos.
	)	2:22-cv-01815-IM
vs.	)	3:22-cv-01859-IM
	)	3:22-cv-01862-IM
KATE BROWN, et al.,	)	3:22-cv-01869-IM
	)	
Defendants.	)	
	)	
MARK FITZ, et al.,	)	VIDEO-RECORDED
	)	VIDEOCONFERENCE
Plaintiffs,	)	DEPOSITION OF
	)	STEPHEN HELSLEY,
vs.	)	VOLUME II
	)	
ELLEN F. ROSENBLUM, et al.,	)	
	)	
Defendants.	)	
	)	*CAPTION
KATERINA B. EYRE, et al.,	)	CONTINUES*
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
ELLEN F. ROSENBLUM, et al.,	)	
	)	
Defendants.	)	

---

DATE TAKEN: JANUARY 30, 2023  
REPORTED BY: LORRIE R. CHINN, RPR,  
Washington Certified Court Reporter No. 1902  
Oregon Certified Court Reporter No. 97-0337

BUELL REALTIME REPORTING, LLC  
206.287.9066 | 800.846.6989

1 DANIEL AZZOPARDI, et al., )  
2 Plaintiffs, )  
3 vs. )  
4 ELLEN F. ROSENBLUM, et )  
5 al., )  
6 Defendants. )

---

8 VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION  
9 OF  
10  
11 STEPHEN HELSLEY  
12 VOLUME II

---

13 10:06 a.m.

14 EL DORADO HILLS, CALIFORNIA

15 (All participants appeared via videoconference.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

R E M O T E   A P P E A R A N C E S

FOR THE OFF PLAINTIFFS (via videoconference):

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FOR THE PROPOSED INTERVENOR-DEFENDANT OREGON ALLIANCE  
FOR GUN SAFETY:

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ALSO PRESENT (via videoconference):

MELODY SORENSEN, VIDEOGRAPHER

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VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION  
OF STEPHEN HELSLEY, VOLUME II

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Mr. Wilson	159
Mr. Williamson	163
Mr. Pekelis	166

EXHIBIT INDEX

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Exhibit 52 Declaration of Stephen Helsley in Support of Plaintiffs' Supplemental Brief; Exhibit 10 - Duncan vs. Becerra	125
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EL DORADO HILLS, CALIFORNIA; JANUARY 30, 2023

10:06 a.m.

--oOo--

THE VIDEOGRAPHER: We are now on the record. This is Volume 2 of the virtual video-recorded deposition of Stephen Helsley in the matter of Oregon Firearms Federation, Inc., et al., versus Brown, et al., in the United States District Court, District of Oregon, Portland Division. The case numbers are 2:22-cv-01815-IM, 3:22-cv-01859-IM, 3:22-cv-01862-IM, and 3:22-cv-01869-IM.

The time is now approximately 10:06 a.m. on January 30th, 2023. My name is Melody Sorensen from Buell Realtime Reporting. Will counsel please identify themselves for the record.

MR. PEKELIS: Zachary Pekelis --

MR. WILLIAMSON: Leonard Williamson representing OFF Plaintiffs.

MR. WILSON: Harry Wilson, special assistant attorney general, for Defendants.

MR. PEKELIS: Zachary Pekelis for Intervenor-Defendant, Oregon Alliance For Gun Safety.

THE VIDEOGRAPHER: The court reporter today is Lorrie Chinn, who will now swear in the

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1 witness.

2  
3 STEPHEN HELSLEY, witness herein, having been first  
4 duly sworn under oath, was  
5 examined and testified as follows:  
6

7 E X A M I N A T I O N

8 BY MR. PEKELIS:

9 Q. Mr. Helsley, good morning again.

10 A. Good morning.

11 Q. Nice to see you. We met last week at your  
12 deposition on January 19th, 2023. Do you remember  
13 that?

14 A. Yes.

15 Q. And this is a continuation or a reopening of  
16 your deposition in the same case. Do you understand  
17 that?

18 A. Yes.

19 Q. So the same guidelines and rules that  
20 Mr. Wilson went over at your deposition on January 19th  
21 still apply. Does that make sense to you?

22 A. I understand.

23 Q. And I'll just go over a couple of those that I  
24 think are the most important. Especially given that  
25 this is taking place over Zoom, it's important to make

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1 sure that I've finished asking my questions before you  
2 begin your answer. So leave a little bit of a pause  
3 perhaps. Does that sound good?

4 A. Yes.

5 Q. And then you understand the oath that you took  
6 today?

7 A. Say again.

8 Q. Do you understand the oath that you took  
9 today?

10 A. Yes.

11 Q. And is there anything that might prevent you  
12 from understanding my questions and answering them  
13 truthfully?

14 A. No.

15 Q. Okay. What did you do to prepare for today's  
16 deposition?

17 A. Well, I read a variety of documents that were  
18 emailed to me. I had to go through and find the errors  
19 in the transcript from the first hearing. That's what  
20 I spent a great deal of time doing.

21 Q. Anything else that you did in preparation?

22 A. No.

23 Q. And what were the documents that were emailed  
24 to you that you mentioned, besides the transcript of  
25 the January 19th deposition?



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1           A. I think I'd defer to Mr. Williamson on that  
2 because his office shipped me a whole variety of  
3 things, and I don't know that I can recall them all.

4           Q. Can you recall any of them?

5           A. Yeah. It was essentially the same thing that  
6 I've seen before: My resume, my statements in this  
7 case, the documents I wrote for it, and there was  
8 material in there regarding the Duncan case in  
9 California.

10          Q. Would that be your declaration that you  
11 submitted in the Duncan case?

12          A. I'm sorry. You have to speak up. I can't --

13          Q. Would that be your declaration that you  
14 submitted in the Duncan case?

15          A. Yeah. I don't know whether the declaration  
16 was there. I know that I was deposed, and I saw the  
17 transcript for being deposed in that case.

18          Q. I see. How about your declaration in that  
19 case, did you review that?

20          A. There was -- there was too much material for  
21 me to read. I got it at about 8 o'clock this morning,  
22 and so I don't know what all is there because I  
23 couldn't get through it all.

24          Q. Understood. Anything else that you did to  
25 prepare for today's deposition?

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1 and people who are particularly good at it can do a  
2 magazine change in probably less than a second.

3 Q. What would you say that the average range is  
4 in terms of time to change a magazine?

5 A. Well, it depends on how you carry it, you  
6 know, is it in your pocket or is it in a magazine pouch  
7 on your belt? Are you wearing a coat over the top of  
8 the magazine?

9 Q. How about just from the time that the magazine  
10 is in your hand, the new magazine is in your hand?

11 A. Okay. It depends a little bit on how the  
12 magazine release works. Some of the older pistols had  
13 a -- like the Walther P38, for instance, had a thing  
14 that you had to push to clear the way for the magazine  
15 to go into the frame.

16 Q. How about for a modern handgun?

17 A. Modern -- if the magazine has been -- the  
18 empty magazine has been released from the firearm and  
19 you have a magazine in your hand and you're slamming it  
20 home, again, if you're well trained, in the second  
21 range.

22 Q. And how about if your training is merely  
23 average?

24 A. Well, then it can be more substantial because  
25 you're not familiar with how it should be done. You

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1 may have to look to make sure the magazine fits into  
2 the magazine well in the firearm. It could be three  
3 seconds, four seconds to do it.

4 Q. Okay. Would you say that the stress of an  
5 actual firearm confrontation could make that changing a  
6 magazine take longer?

7 A. Yes.

8 Q. When an armed attacker pauses to reload, would  
9 you agree that it can provide an opportunity for  
10 victims to flee or attempt to disarm him?

11 A. In theory, yes. Again, the magazine change  
12 can happen so quickly, depending on the shooter's  
13 skill, that it's almost invisible. So, yeah, I mean,  
14 it's possible that citizens could attack a shooter who  
15 is doing a magazine change. I suppose it's happened,  
16 but it's pretty unlikely.

17 Q. Understood. The last thing I wanted to ask  
18 you about, in your January 19th deposition, Mr. Wilson  
19 showed you the declaration from Massad Ayoob. Do you  
20 recall that?

21 A. Yes.

22 Q. And we saw that several portions of your  
23 expert report were identical to Mr. Ayoob's declaration  
24 in Duncan. Do you recall that?

25 A. I do.

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1 Q. And I noticed that the material in your  
2 corrected declaration, Exhibit 51, is the same. It  
3 hasn't been changed and it's still identical in certain  
4 respects to Ayoob's declaration. Do you have any  
5 further light to shed on why there were those  
6 similarities and overlap between your declaration and  
7 Mr. Ayoob's?

8 A. I certainly wish I had some because it's been  
9 a source of pretty substantial anxiety for me since --  
10 during the last week. But, no, I don't. I said before  
11 I just don't remember. I don't recall. I don't know  
12 how it could have gotten there. I don't know that --  
13 yeah. I'm puzzled. I just don't know.

14 Q. Is it possible that maybe some of the  
15 attorneys in the Duncan case who were assisting you  
16 with the preparation of your declaration may have  
17 inserted some of the language from Ayoob's declaration  
18 without telling you?

19 A. I don't think so.

20 Q. Okay. I don't have any other questions.  
21 Thank you for your time, Mr. Helsley.

22 A. You bet.  
23  
24  
25

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E X A M I N A T I O N

BY MR. WILSON:

Q. Good morning, Mr. Helsley. This is Harry Wilson. We spoke a week or so ago as well. And I am an attorney and the special assistant attorney general representing the Defendants in this matter.

Do you remember our conversation last January 19th?

A. I do.

Q. I have just a few brief questions. Mr. Pekelis just asked you about the conversation you and I had with respect to the portions of your original declaration in this matter that appeared to be identical to the declaration of a Mr. Massad Ayoob from 2017.

Since that time you've submitted a corrected declaration, and that corrected declaration has been listed as Exhibit 51, correct?

A. Correct.

Q. As Mr. Pekelis just pointed out, the corrected declaration does not appear to change any of the material you and I discussed that seemed to be identical to the declaration of Mr. Ayoob, correct?

A. Correct.

Q. And since the time you and I last talked on

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1 January 19th, 2023, have you had any conversations with  
2 Mr. Ayooob about why your expert report is similar to  
3 his expert declaration?

4 A. No. I don't know him. I've never spoken to  
5 him.

6 Q. One thing I just wanted to quickly check is  
7 that Mr. Pekelis put on the screen Exhibit 52. And if  
8 the videographer and the court reporter could put that  
9 back up on the screen for just one moment.

10 Great. Thank you. And please scroll to what  
11 is listed as page 20 -- oh, I'm terribly sorry. I said  
12 the wrong number. I'm looking for Exhibit 52, not 50  
13 -- is this 52? Yes, it is. I'm sorry. So please keep  
14 scrolling down.

15 THE VIDEOGRAPHER: (Scrolling).

16 Q. And I would like to scroll to the signature  
17 page of this document. So, Mr. Helsley, you signed  
18 this Exhibit 52, this expert report, on October 6th,  
19 2017, correct?

20 A. Correct.

21 Q. And do you remember the date that the  
22 declaration of Massad Ayooob was signed?

23 A. Oh, I have no idea.

24 Q. And we discussed it during the deposition we  
25 had last January 19th. And to refresh your

Page 161

1 recollection, I'll represent to you that we discussed  
2 that his declaration was signed on May 19th of 2017.  
3 Does that sound familiar to you?

4 A. Well, not really, but I'll take your word for  
5 it.

6 Q. Why don't I just send it to you. I'm going to  
7 send it to Leonard and to -- Lorrie, I'll send this to  
8 you as well.

9 THE REPORTER: Thank you.

10 MR. PEKELIS: Harry, can I just  
11 interject? It is already marked as an exhibit. I  
12 don't know if you plan to use 28, which is already  
13 marked.

14 MR. WILSON: Yes. This is Exhibit 28.  
15 And if everyone already has it, that's the one I'm  
16 going to refer to.

17 THE VIDEOGRAPHER: So do you want me to  
18 stop sharing this one?

19 MR. WILSON: Yes, please. And, Melody,  
20 I don't have your email address, but I'm looking to  
21 place on the screen Exhibit 28. Do you need that?

22 THE VIDEOGRAPHER: Yes. It's  
23 happymel45@hotmail.com.

24 Q. BY MR. WILSON: So, Mr. Helsley, those  
25 documents are circulating now to the videographer and



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1 the court reporter, so give me just a moment.

2 MR. PEKELIS: I sent one out as well,  
3 and mine actually has the exhibit sticker on it. I  
4 don't know if you want to use that.

5 MR. WILSON: Great.

6 THE VIDEOGRAPHER: I did get that. I  
7 got that one, so...

8 MR. WILSON: Why don't we use that one.  
9 And if you could scroll to page 15 of Exhibit 28.

10 THE VIDEOGRAPHER: Just a second.  
11 Sorry.

12 MR. WILSON: That's okay.

13 THE VIDEOGRAPHER: (Scrolling). Just a  
14 minute.

15 Q. BY MR. WILSON: Okay. Great. So,  
16 Mr. Helsley, does this refresh your recollection that  
17 Mr. Ayoob's declaration was signed on May 19th of 2017?

18 A. Yes.

19 Q. And so is it correct to say that your  
20 declaration in the Duncan matter -- your expert report  
21 in the Duncan matter, which was signed on October 6th  
22 of 2017, was signed after Mr. Ayoob submitted his  
23 declaration on May 19th of 2017?

24 A. Yes.

25 Q. Okay. I don't have any further questions.

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1 THE VIDEOGRAPHER: Do you have any  
2 further questions, Mr. Pekelis?

3 MR. PEKELIS: No, I don't.

4 THE VIDEOGRAPHER: Mr. Williamson, any  
5 questions?

6 MR. WILLIAMSON: Yes, I do have some  
7 follow-up questions. Thank you.

8

9 E X A M I N A T I O N

10 BY MR. WILLIAMSON:

11 Q. If we could bring up Exhibit 53, please.  
12 Mr. Helsley, you indicated you didn't know who  
13 FlameHorse was; is that correct?

14 A. Correct.

15 Q. Could the videographer hover above the word  
16 FlameHorse? And could you click on the word  
17 FlameHorse? And could you scroll about halfway down  
18 there? Pause right there, please. Do you see where it  
19 says who is behind the Listverse? On the left-hand  
20 side of the left column do you see where it says who is  
21 behind the Listverse, Mr. Helsley?

22 A. Yeah, Jamie Frater.

23 Q. Do you know that person?

24 A. I do not.

25 Q. Is that the person you attributed the material

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1 to originally?

2 A. Yes.

3 Q. Okay. And counsel asked you if you had ever  
4 treated a gunshot wound. Do you remember that  
5 question?

6 A. Correct.

7 Q. When you were shot, did you treat yourself?

8 A. No.

9 Q. You didn't administer any first aid to  
10 yourself?

11 A. I'm sorry. You're a little bit garbled.

12 Q. Sure. The question is, did you attempt to  
13 administer any first aid to yourself?

14 A. I still can't get what you're saying.

15 Q. The question is, when you were shot, did you  
16 attempt to administer any first aid to yourself?

17 A. No.

18 Q. Okay. Do you recall last week on the 19th the  
19 confusion around the originally dated report -- expert  
20 report dated December 20 and the report that you  
21 approved as dated December 29? Do you remember that  
22 confusion?

23 A. Do I recall the confusion?

24 Q. Yes.

25 A. Yes, I do.

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1 Q. Do you recall contributing or making or  
2 directing the changes to the report that ended up being  
3 the final one dated December 29th?

4 A. Yes. In particular it was the additional  
5 articles I had written.

6 Q. In addition to the articles, you mean  
7 additional insertions of Measure 114; is that correct?

8 A. Yeah.

9 Q. Between December 29 when that was dated and  
10 when the declaration was resubmitted last week with the  
11 correct report, did you direct any additional changes  
12 to occur to your expert report?

13 A. There was a lot of back and forth, but I can't  
14 recall directing any changes. If they were, they were  
15 so minor that I don't -- you know, I don't recall them.

16 Q. Okay. If I'm following the exhibits here  
17 correctly, Exhibit 51 is the corrected declaration.  
18 Could the videographer pull that up and then go down to  
19 page 23, please? Not page 23 of the -- yeah, page 23  
20 at the top there. Right there. Scroll down to about  
21 the middle of the page. There you go.

22 Mr. Helsley, do you see the title of that  
23 document there?

24 A. I do.

25 Q. And I'm going to read it aloud here:

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1 Deposition of Stephen Helsley, Monday, December 18th,  
2 2017. Do you recall that deposition?

3 A. Yes, I do.

4 Q. And that deposition would have occurred after  
5 Mr. Massad Ayooob's declaration and the one that you  
6 submitted October 6th of 2017; is that correct?

7 A. Correct.

8 Q. Okay. I have no other questions. Thank you.

9 THE VIDEOGRAPHER: Are there any other  
10 questions?

11 MR. WILSON: No redirect.

12 THE VIDEOGRAPHER: Mr. Pekelis? Do you  
13 have anything further, Mr. Pekelis? You're muted.

14 MR. PEKELIS: I guess I have one -- just  
15 one -- a couple more questions.

16

17 E X A M I N A T I O N

18 BY MR. PEKELIS:

19 Q. So, Mr. Helsley, just to go back to the  
20 question of the similarities -- the identical aspects  
21 of your declaration and Mr. Ayooob's declaration, would  
22 you agree that based on the identical language  
23 contained therein, it's clear that either you copied  
24 Mr. Ayooob's declaration or he copied yours?

25 A. I think that's a reasonable conclusion.

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1 Q. Okay. I don't have anything else. Thank you,  
2 sir.

3 THE VIDEOGRAPHER: Anyone else?

4 MR. WILLIAMSON: Nothing here.

5 THE VIDEOGRAPHER: We are going off the  
6 record at 11:45, and this concludes this deposition for  
7 today.

8 (Deposition adjourned at 11:45 a.m.)

9 (Reading and signing was not requested  
10 pursuant to FRCP Rule 30(e).)  
11  
12  
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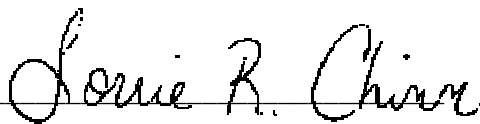
## REPORTER'S CERTIFICATE

I, LORRIE R. CHINN, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the sworn testimony and/or remote proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn remotely to testify to the truth; that the sworn testimony and/or remote proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or remote proceedings given and occurring at the time and place stated in the transcript; that a review of which was requested; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

Reading and signing was not requested pursuant to FRCP Rule 30(e).

WITNESS MY HAND AND DIGITAL SIGNATURE this 3rd day of February, 2023.




LORRIE R. CHINN, RPR, CCR  
Washington State Certified Court Reporter No. 1902  
Oregon State Certified Court Reporter No. 97-0337  
lorrie@buellrealtime.com

## **EXHIBIT 19**



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2 P. PATTY LI  
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9 *Attorneys for Defendant Rob Bonta,  
in his official capacity*<sup>1</sup>

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION  
14

15 **STEVEN RUPP; STEVEN**  
16 **DEMBER; CHERYL JOHNSON;**  
17 **MICHAEL JONES;**  
18 **CHRISTOPHER SEIFERT;**  
19 **ALFONSO VALENCIA; TROY**  
20 **WILLIS; and CALIFORNIA RIFLE**  
21 **& PISTOL ASSOCIATION,**  
22 **INCORPORATED,**

23 Plaintiffs,

24 v.

25 **ROB BONTA, in his official capacity**  
26 **as Attorney General of the State of**  
27 **California; and DOES 1-10,**

28 Defendants.

8:17-cv-00746-JLS-JDE

**SUPPLEMENTAL EXPERT  
REPORT AND DECLARATION  
OF COLONEL (RET.) CRAIG  
TUCKER**

Courtroom: 8A  
Judge: The Honorable Josephine  
L. Staton

Action Filed: April 24, 2017

<sup>1</sup> Rob Bonta has succeeded former Attorney General Xavier Becerra as the Attorney General of the State of California. Pursuant to Federal Rule of Civil Procedure 25(d), Attorney General Bonta, in his official capacity, is substituted as the defendant in this case.

**SUPPLEMENTAL EXPERT REPORT AND DECLARATION  
OF COLONEL (RET.) CRAIG TUCKER**

I, Colonel (Ret.) Craig Tucker, declare under penalty of perjury that the following is true and correct:

1. I have been asked by the Office of the Attorney General of the California Department of Justice to prepare an expert report and declaration on the purpose, use, and features of certain semiautomatic firearms. This supplemental expert report and declaration ("Report") is based on my own personal knowledge and experience, and, if I am called as a witness, I could and would testify competently to the truth of the matters discussed in this Report.

**PROFESSIONAL QUALIFICATIONS**

2. I am a Colonel, US Marine Corps, (Retired). I served as an infantry officer in the Marine Corps for 25 years. I have commanded infantry units from platoon to regiment. I commanded Regimental Combat Team -7 (RCT-7) in Iraq from February 2004 to April 2005. During my time in Iraq, I commanded 22 different US Marine, US Army, and Iraqi Army battalions and exercised tactical control over Naval Special Warfare and US Special Forces, and supported National Tier 1 assets. I commanded the Regiment in both Fallujah battles and numerous smaller battles. I was the target of 9 assassination attempts and was wounded in Husaybah Iraq in July 2004. Upon my return from Iraq, I was assigned to the US Marine Corps National Training Center and was responsible for training and certifying units for combat in Iraq and Afghanistan.

3. I have received two Legion of Merit awards for exceptional meritorious conduct in the performance of outstanding combat services, the Military Order of the Purple Heart, the Navy Commendation Medal for Heroic Action, the Combat Action Ribbon, and seven Sea Service Deployment Ribbons, among other awards.

1           4.     After I retired from military service in 2006, I served as an Assistant  
2 Deputy Administrator for the Office of Secure Transportation (OST), National  
3 Nuclear Security Agency. OST is a paramilitary organization consisting of federal  
4 agents armed with M4s.<sup>2</sup> I was also the Department's Render Safe program in  
5 Albuquerque NM.

6           5.     In 2012, I joined Innovative Reasoning LLC, which provides  
7 professional support services to the U.S. Department of Defense and other  
8 government clients. While at Innovative Reasoning, I developed training programs  
9 and planning capabilities for the Marine Corps, and I developed and taught a  
10 training course on tactical decision-making for law enforcement officers.

11          6.     Through my military service, I gained extensive knowledge and  
12 familiarity with the full range of US combat weapon systems. The automatic rifle  
13 is the foundational combat weapon system. Ground and aviation weapon systems  
14 are specifically designed to support the automatic rifle. My primary purpose in the  
15 latter stages of my career was coordinating, and teaching others to coordinate, air  
16 and ground weapon systems to support the rifleman and his automatic rifle.

17          7.     I have fired the Colt AR-15 5.56 rifle and the Smith and Wesson 5.56  
18 AR rifle. Both are advertised as the civilian version of the M16 combat rifle. In  
19 addition to my automatic rifle experience, I have extensive experience with the  
20 AK-47, having been on the receiving end of hundreds of 7.62 rounds; an experience  
21 best typified during the Battle of Hit when a single individual with one rifle and  
22 apparently inexhaustible supply of 7.62 ammo and magazines kept nine Marines  
23 pinned down for 15 minutes until a LAV-25 20mm chain gun solved the problem. I  
24 have extensive experience with the Colt 1911 .45 caliber semi-automatic and the  
25 Berretta .9m semi-automatic pistol and used both weapons in Iraq.

26  
27  
28                 <sup>2</sup> The M4 is a gas-operated, magazine-fed carbine. It is the shortened version  
of the M16 assault rifle.

9. I hold a B.S. in Criminal Justice from the University of Dayton, a Master of Military Art and Science from U.S. Army Command and General Staff College and the U.S. Army School of Advanced Military Studies, and a Master's degree in National Security and Strategic Studies from the College of Naval Warfare, where I graduated with the highest distinction.

11. I have been retained by the California Department of Justice to serve expert witness in this case. I am being compensated at a rate of \$200 per

12. I have reviewed the statutory definitions of an “assault weapon,” as defined under California’s Assault Weapons Control Act (AWCA) in California Penal Code section 30515(a).<sup>3</sup> Under Penal Code section 30515(a), a semiautomatic centerfire rifle that does not have a fixed magazine qualifies as an assault weapon if it has any of the following features: (1) a pistol grip that protrudes conspicuously beneath the action of the weapon; (2) a thumbhole stock; (3) a folding or telescoping stock; (4) a grenade or flare launcher; (5) a flash suppressor; or (6) a forward pistol grip.<sup>4</sup> A semiautomatic centerfire rifle also qualifies as an assault weapon if it is equipped with a fixed magazine with the capacity to hold more than 10 rounds or has an overall length of less than 30 inches.<sup>5</sup> I have also reviewed the list of rifles that qualify as “assault weapons”

<sup>5</sup> Cal. Penal Code § 30515(a)(2)-(3).

1 under California Penal Code § 30510(a), which have many of the same features and  
2 accessories listed in § 30515(a).

3 13. I am familiar with the features, accessories, and capabilities of rifles  
4 regulated by Penal Code § 30515(a). The AR-15, like the M4, is an offensive  
5 combat weapon system. The only difference is the AR-15 cannot fire on full-auto  
6 (continual shots fired in succession so long as the trigger is pulled) or burst (several  
7 shots fired in succession with a single pull of the trigger)—a picayune difference  
8 that cannot serve to support a non-combat role for the AR-15. In my experience,  
9 soldiers are trained to set select-fire weapons to semi-auto mode, so that a single  
10 round is fired with each pull of the trigger. An M4 or M16 on full-automatic is an  
11 area fire weapon: the auto rate of fire makes the weapon too difficult to control on a  
12 point target. Rifle fire on full automatic is not aimed fire, uses an excessive amount  
13 of ammunition and will damage the weapon if used too often. In fact, in my 14  
14 months of combat, I did not once see an M4 or M16 fired on full auto. Semi-auto  
15 function is used almost exclusively in combat. When operated in semi-auto mode,  
16 the AR-15 and M4 share the same rates of fire, the same maximum effective range,  
17 the same maximum range, use the same magazines designed for combat and the  
18 same ammunition. The AR-15 and M4 are both designed to fire a .223 round that  
19 tumbles upon hitting flesh and rips thru the human body. A single round is capable  
20 of severing the upper body from the lower body, or decapitation. The round is  
21 designed to kill, not wound, and both the AR-15 and M4 contain barrel rifling to  
22 make the round tumble upon impact and cause more severe injury. The  
23 combination of automatic rifle and .223 round is a very efficient killing system.  
24 The same can be said of the AR-15.

25 14. Automatic rifles, like the M-16 and its more modern carbine variant  
26 M4, are functionally similar to semiautomatic rifles regulated under California's  
27 AWCA and often are equipped with the very same features, like pistol grips and  
28 adjustable stocks. It is my opinion, based on my military service, that these

1 features, individually and in combination, make semiautomatic rifles more lethal  
2 and most useful in combat settings, as described in more detail below.

3 15. Detachable magazines: In order for a rifle to qualify as an assault  
4 weapon under California Penal Code § 30515(a), the rifle must have the capability  
5 of accepting a detachable ammunition magazine (by not having a fixed magazine).  
6 Detachable magazines improve the killing efficiency of automatic rifles, allowing  
7 the combat rifleman to efficiently carry a combat load of 120 rounds in four 30-  
8 round magazines, to rapidly change magazines in combat, and to increase killing  
9 efficiency by significantly reducing reload time. Changing magazines during  
10 intense combat is the most important individual skill taught to Marines. During  
11 intense combat, the detachable magazine provides a rifleman the capability to fire  
12 120 rounds on semi-automatic in three minutes at a high-sustained rate of 45 rounds  
13 per minute. In a civilian self-defense context, by contrast, an individual would not  
14 have a need for such a high rate of fire.

15 16. Pistol grip protruding beneath the action of a rifle: I am a 15<sup>th</sup> Award  
16 Expert on the M16 and M4. I carried an M4 every day for 14 months during my  
17 time in command of RCT-7 in Iraq. I used an M4 in combat, and I killed with it.  
18 The pistol grip beneath the action of an automatic rifle serves only two purposes.  
19 First, the pistol grip allows the rifleman to pull the rifle into her shoulder with each  
20 shot, an action which increases stock weld, reduces semi-automatic/automatic  
21 recoil, and reduces barrel rise. Stock weld or cheek weld refers to the firmness of  
22 the contact between the rifle stock, the shooter's cheek, and the shooter's shoulder.  
23 A firm stock weld is required for effective semi-automatic and automatic rapid fire.  
24 Absent any pistol grip, a semi-automatic rifle would be difficult to operate when  
25 fired rapidly, as the rifle barrel would seesaw up and down with each shot fired in  
26 succession. Second, the pistol grip functions as a hand rest to reduce hand/finger  
27 fatigue during long combat engagements. Both actions increase the killing  
28

1 efficiency of automatic rifles and are necessities in sustained combat operations of  
2 weeks or months when firing a rifle rapidly.

3 17. Forward pistol grip: The forward pistol grip provides leverage to  
4 tighten a stock weld on short barrel automatic weapons and reduces recoil and  
5 barrel rise on short barrel automatic rifles. Forward pistol grips were added to the  
6 M4 to increase M4 killing efficiency.

7 18. Folding stock: A folding stock causes weapon instability. For that  
8 reason, folding stock automatic rifles are designed for military personnel, whose  
9 primary weapon is vehicle or air-mounted (tank, Bradley, Apache), who may be  
10 required to escape from a mangled vehicle, or who may need to abandon a  
11 destroyed weapon system and need a substitute weapon for offensive combat.  
12 Outside of the military context, folding stocks that are not properly locked in place  
13 can cause significant safety risks to the shooter due to recoil.

14 19. Grenade or flare launcher: A Marine Corps fireteam consists of a  
15 fireteam leader, a rifleman, an assault gunner, and a grenadier. The grenadier is  
16 armed with a grenade launcher. The grenadier uses the grenade launcher to  
17 suppress or kill human beings so the rest of the fireteam can maneuver into position  
18 to kill those humans with automatic rifle fire. The launcher is a separate weapon  
19 system attached to as few rifles as possible dependent on the combat mission. In  
20 my experience, grenade launchers attached to rifles are cumbersome, difficult to  
21 aim, difficult to carry, and are not as effective as a standalone grenade launcher.  
22 They have no legitimate use in self-defense.

23 20. Flash suppressor/flash hider: The purpose of the flash suppressor is to  
24 reduce combat signature by cooling and dispersing burning gases. This makes it  
25 more difficult for the enemy to pinpoint a rifleman's location, especially in low  
26 light conditions. The flash suppressor facilitates night combat operations by  
27 reducing muzzle flash and mitigating muzzle flash impact on night vision goggles.  
28



1 This accessory serves specific combat-oriented purposes and is not needed for self-  
2 defense.

3 21. Fixed magazine with the capacity to accept more than 10 rounds:

4 Automatic rifles are offensive combat weapons systems designed to kill efficiently  
5 and effectively. Any increase to magazine capacity increases the killing efficiency  
6 of the automatic rifle. A 30-round fixed magazine can fire more rounds in a given  
7 amount of time than three 10-round detachable magazines, which would need to be  
8 reloaded to fire the same number of rounds, slowing down the rate of fire.

9 Similarly, a 100-round drum magazine can fire more rounds in a given period of  
10 time than ten 10-round detachable magazines. As noted above in connection with  
11 detachable magazines, an individual using a rifle in self-defense would not need  
12 such a high, continuous rate of fire.

13 22. The AR-15 is an offensive combat weapon no different in function or  
14 purpose than an M4. In my opinion, both weapons are designed to kill as many  
15 people as possible, as efficiently as possible, and serve no legitimate sporting or  
16 self-defense purpose. Self-defense and military combat are different. The weapons  
17 and accessories needed in one may not be needed or appropriate in the other. For  
18 instance, when I was serving in the military, I carried my M4 for offensive combat  
19 and a handgun for self-defense. Defensive combat is generally up close and very  
20 personal. At that range, it is very difficult to use a rifle as a defensive weapon,  
21 except as a blunt force instrument. My 9mm pistol was the self-defense weapon of  
22 choice, and we were trained to expend only 1-2 rounds per adversary in pistol  
23 combat. The features identified in California Penal Code § 30515(a) enhance the  
24 lethality of both semiautomatic and automatic rifles and are most appropriate for  
25 combat applications when used in conjunction with those types of weapons  
26 systems.



1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on January 6, 2023 at Sandia Park, New Mexico

3  
4 

5  
6 Col. (Ret.) Craig Tucker

## **EXHIBIT A**

Craig A. Tucker  
Colonel, US Marine Corps, (Ret)  
65 Harms Rd  
Sandia Park NM 87047  
[catucker@protonmail.com](mailto:catucker@protonmail.com)  
505-504-4289

**CITY OF ALBUQUERQUE OFFICE OF EMERGENCY MANAGEMENT (07/2021-PRESENT)**

- Training and Education Coordinator/Acting Senior OEM Planner
  - Coordinate with County and State agencies to develop training and exercise programs that prepare the City of Albuquerque to mitigate, respond to, and recover from disasters.
  - Develop response plans for wildfire, flood, earthquake, and weapons release and test the plans in tabletop exercises and drills.
  - *In coordination with Albuquerque Public Schools developed and executed a school drill assessment/evaluation program.*
  - *Created, developed, and initiated training for APS, APD, and AFR on a doctrinal, best-practices-based approach to "Command and Control, Active Shooter, in a School, School in Session"*
  - Develop a training and exercise program to meet FEMA National Qualification Standards.
  - Serve as the Operations Chief for EOC activations and training.
  - Responsible for Plans updates and revisions, including a rewrite of the CABQ Comprehensive Emergency Management Plan.
  - Write and manage OEM Grants, including SHSGP, EMPG and Hazard Mitigation Grants.

**RAVENSWOOD SOLUTIONS INC. (10/2019 – 06/2021)**

- Program Manager, US Marine Corps Operations
  - Provide subject matter expertise and develop capture plans to provide live, virtual, and constructive capabilities in support of the Commandant's Planning Guidance.
  - Project Manager for Ravenswood Solutions live-instrumented training and AAR support to MAGTF Warfighting Exercise-20 (MWX 20), the largest instrumented exercise in USMC history.
  - Co-authored White Paper on the application of machine-learning and Artificial intelligence to support unit readiness reporting.
  - Provided subject matter expertise to support ML/AI Wargaming prototype development.

•

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- Project Director, Middle East Operations
  - Lead planner and primary proposal author of a of a multi-corporation proposal to develop an 800-structure urban live fire and maneuver range in a Gulf Coast Coalition country.
  - Lead planner and primary proposal author of a multi-corporation proposal to develop a comprehensive training program for an emergent Marine Corps in a Gulf Coast Country.
- Program Manager, National Security Operations
  - Provide subject matter expertise, develop, and supervise training services in support of Department of Energy nuclear security and non-proliferation operations.
- Independent Contractor (01/2022 – 06/2022)
  - Acted as the Ravenswood Solutions Inc. US Marine Corps subject matter expert.
  - Acted as the Ravenswood Solutions Inc., training and leadership subject matter expert.

**INNOVATIVE REASONING, LLC (08/2012 - 09/2019)**

- Director, Studies and Analysis
  - Provided analyses, recommendations and participated as the senior tactical SME in support of the following Marine Corps Combat Development Command requirements.
    - Development of the U.S. Marine Corps post-war on terror Training Strategy.
    - Development of an adaptive planning capability employing multi-agent modeling, experiential learning theory, and machine learning.
    - Improving Small Unit Leader Decision-making through training in Recognition Primed Decision-making and experiential learning theory.
    - Chaired US Marine Corps 3d Annual Maneuver Warfare Conference (2018).
- Director, Federal Programs
  - Provided direction, supervision, and oversight to 5 program managers assigned to DOD and Department of Energy contracts in the United States and overseas.

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- Program Director, Law Enforcement Tactical Decision-making
  - Created, certified, and taught tactical decision -making courses focused on making decision in high risk, low occurrence, fast moving circumstances with risk of death, serious injury.
  - Developed and taught 400+ series of National Incident Management Courses to support local law enforcement requirements.

**DEPARTMENT OF ENERGY (09/2006 – 07/2012)**

- Render Safe, Program Manager (SES)
  - Responsible for the Department of Energy (DOE) operational elements conducting nuclear counterterrorism and nuclear accident response in support of Tier 1 elements.
  - Responsible for organizing, resourcing, developing, and executing crisis response render-safe operations in support of Presidential and National Security policy.
- Assistant Deputy Administrator (SES), Office of Secure Transportation (OST)
  - Responsible for the safe and secure transportation of nuclear weapons, materials, and components in the continental United States.
  - Acted as the Senior Energy Official and National Nuclear Security Administration Incident Commander for incidents involving OST assets and during DHS-directed NIMS National Training Programs
  - Provided leadership, vision, and direction to a 1000+ mixed para-military and civilian workforce.
  - Developed and implemented innovative security practices focused on intelligence-driven operations, leadership, and performance-based approach to training. Resulting security Doctrine provided a blueprint for significant changes to DOE physical security doctrine.
  - Provided astute and responsible management of a \$270 million budget.

**UNITED STATES MARINE CORPS (06/1981- 08/2006)**

- Director of Training, Tactical Training Exercise Control Group (TTECG) (07/2005-08/2006)
  - Selected by the Commandant to rebuild and lead the Marine Corps

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Service-level pre-deployment training program.

- Responsible for the successful integration of emergent and innovative urban operations with conventional combined arms operations. Trained organizations from the US and numerous allied countries.
- Managed a training budget of \$30 million. Developed and implemented new approaches to training to maximize effective use of increased training budget. Increased the number of Marines/units trained per year and successfully integrated complex, multi-discipline training requirements into a coherent, effective training program
- Commanding Officer, Regimental Combat Team 7 (RCT-7) (06/2003 - 07/2005)
  - Commanded U.S. Marine Corps Regimental Combat Team 7 during Operation Iraqi Freedom II. Tour included 14 months of continuous combat command in Al Anbar Province.
  - Commanded RCT-7 during major urban combat operations to include battles of Fallujah I, Al Fajr (Fallujah II), Husaybah, Ramadi, and Hit.
  - Developed and implemented successful strategic plans for reconstruction of western Iraq; managed over \$200 million in construction and procurement contracts. Responsibilities included establishing border security, counter-terrorism operations, infrastructure development, and security forces training.
  - Acted as Superintendent for an elementary school system consisting of 12 elementary schools throughout Al AnBar province. Constructed the schools, hired teachers, hired administrators, and provided safety and security for students, teachers, and staff.
  - Responsible for the Force Protection and security of US bases and approximately 20,000 military and contractor personnel.
- Director of Operations, Training and Education Command (06/2002-05/2003)
  - Responsible for the Marine Corps' training programs, with an 80,000+ personnel annual throughput.
  - Developed and successfully initiated programming and procurement for the Marine Corps' 10-year range modernization and instrumentation plan. Established and chaired Range Instrumentation Working Group.
  - U.S. Marine Corps Service-level representative to the OSD working group responsible for developing training transformation strategies.

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- Successfully led USMC effort to meet the congressionally mandated requirement to replace Vieques Island with a CONUS based amphibious live-fire training capability within the year.
- Commander, 2<sup>nd</sup> Battalion, 7<sup>th</sup> Marine Regiment.
- Director of Operations, 7th Marine Regiment.
- Director of Operations, 13th Marine Expeditionary Unit (13th MEU).
  - Responsible for leadership and performance of a task-organized team with 1000+ members.
  - Served as primary planner in Naval and Joint crisis action planning and execution, to include the development of training plans, equipment procurement, and exercise development for the organization's worldwide contingency operations.
- Operations Planner, I Marine Expeditionary Force (I MEF). Primary planner and architect for a multi-national effort to rewrite the operations plan for defense of the Republic of Korea.
- Commander, Presidential Security Force, Camp David, MD
  - Commanding Officer of Marine Corps Detachment responsible for the security of the Presidential Retreat at Camp David.
  - Successfully balanced a 33% reduction in force structure with implementation of an innovative physical security plan that integrated personnel reductions, new technologies, and manpower, while increasing the security posture.
- Commanding Officer:
  - Weapons Company, Marine Infantry Battalion. (1988-1989)
  - Infantry Company, Marine Infantry Battalion. (1986-1988)
  - Guard Company, Nuclear Weapons Security, Adak, AK. (1984-1986)
  - Headquarters Company, Supply Battalion. (1983-1984)

#### **AWARDS**

(2) Legions of Merit with Combat Valor device, Purple Heart, Navy Commendation Medal for Heroic Action, Combat Action Ribbon, (7) Sea Service Deployment Ribbons, numerous other awards, and

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decorations.

#### **PAPERS**

- “On Demand Readiness for Army Commanders Through AI and Machine Learning” (2020) (White Paper for Army Applied Laboratory and the Office of Naval Research. (co-authored with SOMETE Technology and Lockheed Martin)
- “Band of Brothers: The 2D Marine Division and the Tiger Brigade in the Persian Gulf War”  
An Analysis of the Impact of Organizational Culture on Tactical Joint Warfare (School of Advanced Military Studies, US Army Command and General Staff College)
- “False Prophets: The Myth of Maneuver Warfare and the Inadequacies of FMFM ‘Warfighting’”  
(School of Advanced Military Studies, US Army Command and General Staff College,
- “Towards an Intellectual Component to Joint Doctrine: The Philosophy and Practice of Experiential Intelligence” (Naval War College)

#### **EDUCATION**

- B.S. Criminal Justice, University of Dayton
- MMAS, U.S. Army Command and General Staff College
- MMAS, US Army School of Advanced Military Studies
- MA, National Security and Strategic Studies, College of Naval Warfare (Highest Distinction)



## **EXHIBIT 20**

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(971) 673-1880

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

OREGON FIREARMS FEDERATION, INC.,  
et al.,

Plaintiffs,

v.

TINA KOTEK, et al.,

Defendants,

and

OREGON ALLIANCE FOR GUN SAFETY,

Intervenor-Defendant.

Case No. 2:22-cv-01815-IM (lead case)  
3:22-cv-01859-IM (trailing case)  
3:22-cv-01862-IM (trailing case)  
3:22-cv-01869-IM (trailing case)

**DECLARATION OF KEVIN SWEENEY**

MARK FITZ, et al.,	
	Plaintiffs,
v.	
ELLEN F. ROSENBLUM, et al.,	
	Defendants.
KATERINA B. EYRE, et al.,	
	Plaintiffs,
v.	
ELLEN F. ROSENBLUM, et al.,	
	Defendants,
and	
OREGON ALLIANCE FOR GUN SAFETY,	
	Intervenor-Defendant.
DANIEL AZZOPARDI, et al.,	
	Plaintiffs,
v.	
ELLEN F. ROSENBLUM, et al.,	
	Defendants.

**DECLARATION OF KEVIN M. SWEENEY**

I, Kevin M. Sweeney, declare the following:

1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration, and testify based on my personal knowledge and information.
2. I am a Professor of History *emeritus* at Amherst College. From 1989 to 2016, I taught history and American Studies at Amherst. I regularly offered courses on colonial American history, the era of the American Revolution, and early American material culture, which focused on studying the production and use of home furnishings and other artifacts in common use

dating from the 1600s, 1700s, and early 1800s. During these years, in my own research on material culture, I made use of colonial-era probate inventories to study such topics as home furnishings in an effort to discover what types of possession were commonly found in households, to measure changes in standards of living, and to gain insights into domestic architecture.<sup>1</sup> I also examined critically and wrote about the strengths and weaknesses of these sources, their usefulness and pitfalls.<sup>2</sup> For decades, historians who are aware of these records' usefulness and their limitations have used estate inventories to study agricultural changes in England, wealth and social structures in England and its colonies, the institution of slavery in colonial American and the lives of slaves, and household possessions in America, England, and France.<sup>3</sup>

3. My current research on seventeenth and eighteenth-century firearms and militias utilizes similar types of methodologies, documentary sources, and period artifacts. This project, which has been going on for over a decade, was initially inspired by my skepticism of the controversial claims and pretended use of evidence from probate inventories in Michael A. Bellesiles, *Arming America: The Origins of a National Gun Culture* (New York: Alfred A. Knopf, 2000). As part of my on-going project, I have given papers at the annual meetings of the American Historical Association and the Organization of American Historians, at conferences on firearms and society at Stanford and Wesleyan Universities, and elsewhere, and published two essays "Firearms Militias, and the Second Amendment" (2013) and "Firearms Ownership and

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<sup>1</sup> Kevin M. Sweeney, "Furniture and the Domestic Environment in Wethersfield, Connecticut, 1640-1800 in *Material Life in America, 1600-1860*, Robert B. St. George, editor (Boston: Northeastern University Press, 1988), 261-261-290.

<sup>2</sup> Kevin M. Sweeney, "Using Tax Lists to Detect Biases in Probate Inventories," *Early American Probate Inventories: Dublin Seminar for New England Folklife Annual Proceedings 1987*, Peter Benes, editor (Boston: Boston University Press, 1989), 32-40.

<sup>3</sup> Some notable examples which also contain informed observations on the use of probate inventories, their biases, and how to deal with the biases see: James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill: University of North Carolina Press, 1994); Gloria L. Main, *Tobacco Colony: Life in Early Maryland, 1650-1720* (Princeton: Princeton University Press, 1982), esp. 49, 282-286; Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill: University of North Carolina Press, 1998); Carole Shammas, *The Pre-Industrial Consumer in England and America* (Oxford: Oxford University Press, 1990), esp. 19-20; Lorna Weatherill, *Consumer Behaviour & Material Culture in Britain 1660-1760*, 2nd. ed. (London: Routledge, 1996), esp. 201-207.

Militias in Seventeenth- and Eighteenth-Century England and America” (2019). A third essay is forthcoming on “Revolutionary State Militias in the Backcountry and Along the Frontiers,” and I am currently working on a fourth essay as well as working on a book-length manuscript. My curriculum vitae, detailing my education, experience, and publications, is attached to this declaration as **Exhibit A**.

4. I have been retained by the State of Oregon Defendants to provide an expert opinion on repeating firearms in eighteenth-century America. I make this declaration on the basis of my training, professional expertise, and research. For my work in this case, I am being compensated at a rate of \$50 per hour.

5. During the 1700s, most gun owners in the British American colonies and in the newly independent republic of the United States possessed and used single shot, muzzle-loading, flintlock firearms. As Harold Peterson stated in his classic 1956 book -- *Arms and Armor in Colonial America, 1526-1783*: “The period began in 1689 with the muzzle-loading smooth-bore musket and pistol as the most popular weapons. In 1783, almost a hundred years later, the period ended with the same weapons [i.e. muzzle-loading smooth-bore muskets and pistols] still supreme, and without even any notable improvements in their design or construction.”<sup>4</sup> Peterson continued: “Breech-loaders and repeaters had appeared frequently on the scene but had made little impression upon it.”<sup>5</sup>

6. Evidence compiled during a decade of research using eighteenth-century probate inventories, militia muster lists, newspapers, and other documentary sources confirms the validity of Peterson’s basic conclusions while offering three minor modifications. First, these weapons described by Peterson [i.e., the muzzle-loading smooth-bore musket and pistol] were still “supreme” in 1800 and probably as late as 1810. Second, most muzzle-loading, flintlock long arms that were privately owned and used during this period were not muskets, but lighter firearms that were usually cheaper and had narrower bores than did muskets. Finally, it is more accurate to

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<sup>4</sup> Harold L. Peterson, *Arms and Armor in Colonial America 1526-1783* (Harrisburg, Penn.: Stackpole Publishing 1956), 221.

<sup>5</sup> *Ibid.*, 221.

say that repeaters had *occasionally* appeared on the scene and not “frequently” as Peterson believed. Here, he was probably misled by the preference that private collectors and institutional collections had (and still have) for obtaining rare examples of unusual or innovative firearms.

#### **I. Firearms Owned By Eighteenth-Century Americans**

7. Today, we tend to refer to any muzzle-loading eighteenth-century gun as a musket, and this is what Peterson did in the statement quoted above. However, Peterson knew better, as did Ben Franklin. In the mid-1740s, Franklin informed the readers of his Philadelphia newspaper that a “Musket” was “the Name of a particular Kind of Gun.”<sup>6</sup> An eighteenth-century musket was a sturdy, muzzle-loading military firearm that fired a single lead ball weighing about an ounce, had a sling for ease of carrying on long marches, and had a lug near the muzzle for attaching a bayonet. It weighed about 10 to 11 pounds and was .69 caliber in its bore if French or .75 caliber if English, with an average barrel length of 44 inches.<sup>7</sup> On a battlefield, a musket was more than just a firearm: because of its weight and sturdy construction and because of its bayonet, a musket also functioned as a club and a spear. These capabilities were integral to its role as an eighteenth-century military arm. The combination of these features and capabilities made a musket “a Universal Weapon.”<sup>8</sup>

8. Eighteenth-century muskets did have two serious drawbacks which they shared with all flintlock, muzzle-loading smoothbores. First, their accuracy and range were limited. The round ball fired by these weapons was not very aerodynamic, and this produced a great deal of drag that reduced its velocity. A musket’s smooth-bore barrel also lacked rifling, which were spiral grooves cut inside the barrel. When a ball traveled down a barrel with rifling, the grooves imparted a spin to the ball that stabilized and flattened its trajectory, increasing its distance and accuracy. (The effect of rifling on a rifle ball’s flight can be compared to throwing a spiral pass

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<sup>6</sup> “Form of Association” in *The Papers of Benjamin Franklin*, ed., Leonard W. Labaree, et al., 40 volumes to date (New Haven: Yale University Press, 1959-), Vol. 3, 208.

<sup>7</sup> Author’s estimate of barrel averages calculated from data found in George C. Neumann, *Battle Weapons of the American Revolution*, (Texarkana, Texas: Scurlock, 1998), 121-141.

<sup>8</sup> Stuart Reid, *The Flintlock Musket: Brown Bess and Charleville 1715-1865* (Oxford: Osprey, 2016), 61, 55-60.

in football which also flattens trajectory and improves accuracy.) While a smooth-bore musket may have been just as accurate as an eighteenth-century muzzle-loading rifle at distances of up to 50 yards, most authorities agree that a musket was not very accurate at ranges beyond 100 yards.<sup>9</sup> Today, pistols and most long arms other than shotguns have rifled barrels.

9. Loading and reloading eighteenth-century muskets was a complicated and relatively slow process by today's standards. To load a musket, a shooter held it in front of him parallel to the ground, pulled back the gun's cock to its half cock position to prevent a premature discharge, and then took from a cartridge box an individual paper cartridge that contained a pre-measured load of gunpowder and a ball. Next one opened the priming pan, bit the cartridge and poured a small amount of powder into the priming pan which was then closed shut. Following this, the shooter placed the musket upright on the ground and poured the remainder of the cartridge's gun powder down the barrel, and then crammed the paper cartridge with its ball into the barrel. (The cartridge's paper wrapper served as wadding, holding the ball in place.) A ramrod was used to push the cartridge paper and ball down the barrel, after which the ramrod was recovered and secured in its resting place under the barrel. The musket was then raised, placed on full cock, aimed, and the trigger pulled. Pulling the trigger released the cock, which held a flint that moved forward, striking a steel frizzen, creating sparks that ignited the powder in the priming pan which in turn ignited the charge of powder placed in the barrel, creating an explosion that—finally—discharged the musket ball. As a rule, a musket could realistically be loaded and fired two or three times a minute in combat by well-equipped and trained soldiers.<sup>10</sup>

10. The process of loading and reloading a musket took even longer if instead of using a prepared paper cartridge, one used gunpowder from a powder horn to prime the pan and

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<sup>9</sup> Reid, *Flintlock Musket*, 34. For a claim that a rifle had an advantage over a musket at distances greater than 50 yards see John F. Winkler, *Point Pleasant, 1774: Prelude to the American Revolution* (Oxford: Osprey, 2014), 29. For a claim that a rifle and a musket were equally accurate at 100 yards see Alexander Rose, *American Rifle, A Biography* (New York: Delta Trade Paperbacks, 2009), 20.

<sup>10</sup> Jeremy Black, *European Warfare, 1660-1815* (New Haven: Yale University Press, 1994), 40; Hew Strachen, *European Armies and the Conduct of War* (London: George Allen & Unwin, 1983), 17.

then poured into the horn's measuring cap the amount of powder needed to charge the barrel. With this procedure one also had to remove an individual musket ball from a shot pouch and place it in the barrel after pouring down the measured charge of powder. The ball was then rammed home. Using this method of loading not only took longer, but also lacked the wadding provided by a paper cartridge which helped hold the ball in place. According to the results of one modern test, wadding also increased a smoothbore's muzzle velocity by about 30%.<sup>11</sup> Most hunters, backwoods men with muzzle-loading rifles, and many colonial militiamen lacked cartridge boxes and paper cartridges and instead used powder horns and shot bags.

11. Even with these drawbacks, colonial governments and later state governments armed troops with these muskets during the French and Indian War (1754-1763) and the Revolutionary War (1775-1783). There really weren't serious alternatives. As a result, the British Ordnance Office loaned colonial governments 22,000 muskets to arm provincial troops raised for active service in the field during the French and Indian War, and at least 100,000 European muskets—most of them French—were imported during the American War for Independence.<sup>12</sup> During the French and Indian War, the British also sent muskets to arm Georgia and North Carolina militiamen who lacked arms, and state governments sometimes provided arms for mobilized militiamen during the Revolutionary War.<sup>13</sup>

12. As a rule, American colonists preferred lighter firearms that were better suited than muskets for pest control, birding, or hunting. Especially popular in New England were locally made or imported smoothbore and fusils that weighed only 6 to 7 pounds and had narrower bores of .60 to .65 caliber, with average barrel lengths of 50 inches.<sup>14</sup> The narrower

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<sup>11</sup> Glenn Foard, *Battlefield Archaeology of the English Civil War* British Series 570 (Oxford: British Archaeological Reports, 2012), 105.

<sup>12</sup> De Witt Bailey, *Small Arms of the British Forces in America 1664-1815* (Woonsocket, R.I.: Mowbray, 2009), 120-123; George D. Moller, *American Military Shoulder Arms*, 2 volumes (Albuquerque, N.M., 2011), Vol. 1, Appendix 5, 484-485.

<sup>13</sup> Kevin M. Sweeney, "Firearms, Militias, and the Second Amendment" in Saul Cornell and Nathan Kozuskanich, eds. *The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller* (Amherst: University of Massachusetts Press, 2013), 335, 348, 351-352.

<sup>14</sup> Author's estimate of barrel averages calculated from data found in Neumann, *Battle Weapons of the American Revolution*, 150-166.



bores used smaller and lighter projectiles, required less powder for each shot, and thus reduced the weight of the lead ammunition one carried.<sup>15</sup> Some New England fowlers could outrange muskets and some were modified to carry a bayonet.<sup>16</sup> However, because of their lighter weights and sleeker construction, they were not necessarily as sturdy or as “soldier-proof” as a musket nor as effective as a club.

13. Many residents living in the colonies stretching from New York to Virginia owned “trade guns.” These were inexpensive, muzzle-loading, single shot, smooth-bore firearms designed and produced for trade with Native Americans. Some of these guns weighed as little as 5.5 pounds, had bores of .57 to .62 caliber, and barrels only 36 to 40 inches long.<sup>17</sup> Because of these features, they were much easier to handle than a musket and employed about half the weight of lead and powder than compared to a musket for each shot. However, these light, often cheaply constructed firearms did not function well as clubs and were not designed to carry a bayonet.

14. In the backcountry of Pennsylvania and the colonies further south there was a distinct minority of men who owned more expensive locally made long rifles. As a rule, these firearms weighed from 7 to 8 pounds, had .58 to .62 caliber bores—though some were even smaller—and barrels averaging 42 inches in length, and fired projectiles weighing much less than musket balls.<sup>18</sup> Because of the barrel’s rifling, these guns were more accurate than smoothbore muskets and outranged them. However, they took more time to reload because riflemen had to use powder horns and bullet pouches instead of paper cartridges, and reloading became harder as

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<sup>15</sup> Steven C. Eames, *Rustic Warriors: Warfare and the Provincial Soldier on the New England Frontier, 1689-1748* (New York: New York University Press, 2011), 121-122; Neumann, *Battle Weapons of the American Revolution*, 206-210.

<sup>16</sup> Douglas D. Scott, et al., “Colonial Era Firearm Bullet Performance: Live Fire Experimental Study for Archaeological Interpretation” (April 2017), 26, 36; Tom Grinslade, *Flintlock Fowlers: The First Guns Made in America* (Texarkana, Texas: Scurlock Publishing 2005), 59, 72, 73, 75.

<sup>17</sup> M. L. Brown, *Firearms in Colonial America: The Impact on History and Technology 1497-1792* (Washington, D.C.: Smithsonian Institution Press, 1980), 283; Neumann, *Battle Weapons of the American Revolution*, 203-205.

<sup>18</sup> Author’s estimate of barrel averages calculated from barrels lengths of individual muskets given in Neumann, *Battle Weapons of the American Revolution*, 215-225.

gunpowder residue built up in the grooves of the barrel's rifling.<sup>19</sup> Additionally, these long rifles were not designed to take a bayonet, and they could break if used as a club.

15. Muzzle-loading pistols were not as popular as long arms which—as experts have pointed out—“could economically be used dually for protection and hunting.”<sup>20</sup> Pistols were therefore found in only a minority of eighteenth-century probate inventories (Table 1). It took about 15 seconds to reload a pistol, and as a result, they were often made in pairs “so that the owner might have two shots at his command.”<sup>21</sup> Instead of taking time to reload a pistol on a battlefield, cavalry troopers used discharged pistols as clubs or threw them at enemy cavalymen.<sup>22</sup> As it was, period pistols were discharged in close proximity to their targets because their low muzzle velocity of 330-440 f/s limited the range and impact of their projectiles. By comparison, muzzle velocities produced by reproductions of eighteenth-century muskets (780 f/s to 870 f/s), fowlers (1160 f/s to 1444 f/s) and rifles (1195 f/s to 1320 f/s) are much higher.<sup>23</sup>

16. Civilian officials and military officers generally had a low opinion of trade guns, fowlers and even the period's American-made long rifles. During the French and Indian War, firearms in use in New Hampshire were said to be “in general of the meanest Sort” while those in Connecticut “which belong to private persons [were] mostly poor and undersized and unfit for an expedition.”<sup>24</sup> In 1756, most of New York's militia were armed with guns “chiefly for the Indian

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<sup>19</sup> John W. Wright, “The rifle in the American Revolution,” *American Historical Review* Vol. 29, No. 2 (January 1924), 293-299.

<sup>20</sup> Jeff Kinard, *Pistols: An Illustrated History of their Impact* (Santa Barbara, CA: ABC-CLIO, 2004), 45.

<sup>21</sup> Harold L. Peterson, *Treasury of the Gun* (New York: Golden Press, 1962), 189.

<sup>22</sup> For use of muzzle-loading pistols as clubs and missiles on battlefields see C. H. Firth, *Cromwell's Army* 2<sup>nd</sup> ed. (Oxford: Oxford University Press, 1911), 142; David Blackmore, *Arms & Armour of the English Civil Wars* (London: Royal Armouries, 1990), 49.

<sup>23</sup> Scott, et al., “Colonial Era Firearm Bullet Performance,” 26, 36; Douglas D. Scott, et al. “Firearm Bullet Performance: Phase II, Live Fire Experimental Study for Archaeological Interpretation,” 31. Both reports are available online.

<sup>24</sup> “Blair Report on the State of the Colonies” in Louis K. Koontz, *The Virginia Frontier, 1754-1763* (Baltimore: The Johns Hopkins Press, 1925), 170, hereafter cited as the “Blair Report”; Governor Thomas Fitch to Sir Thomas Robinson, August 1, 1755 in *Collections of the Connecticut Historical Society*, Vol. 1, 265-266.

Trade,” and not muskets.<sup>25</sup> Later, George Washington referred to such smooth-bore long arms as “trash or light arms.”<sup>26</sup> Over the course of the Revolutionary War, he and his officers even phased out the use of rifles in the Continental Army, rearming soldiers with muskets fitted with bayonets.<sup>27</sup> Governor Thomas Jefferson characterized most of the privately owned smoothbore guns carried by his state’s militiamen as “such firelocks [i.e. flintlocks] as they had provided to destroy noxious animals which infest their farms.”<sup>28</sup>

17. Data drawn from group of probate inventories of males who died during the second half of the eighteenth-century confirm these period observations concerning the preferences of American gun owners (Table 1). These sources can be particularly useful and quite reliable for assessing the preferences of period gunowners for different types of firearms. Even cursory descriptions of firearms as “a gun” can be revealing when combined with the price that individuals taking the inventory assigned. Most guns in the inventory were long arms valued at £1 (i.e. 20 shillings), which was the usual cost of a single shot muzzle loading firearm. Such weapons would have been affordable given the fact that a daily wage during the period for unskilled day labor usually varied between 1 and a half and 2 shillings. While there was an obvious preference for long arms, muskets and rifles constituted a minority of such weapons.

18. The more expensive guns found in these 3,249 eighteenth-century probate inventories were also likely to be some type of muzzle loading, single-shot long arms. As a rule, rifles were valued at £2 to £3, which was twice or three times the cost of common muzzle-loading smoothbore long arms. Expensive smoothbore weapons were likely to be imported fowlers or guns ornamented with silver mountings. Occasionally, one sees double barreled guns which, along with a pair of pistols, was the period’s more realistic provision for being able to

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<sup>25</sup> “Blair Report,” 171.

<sup>26</sup> General George Washington to Gentlemen, Feb. 7, 1777 in Nathaniel Bouton, ed., *Documents and Records Relating to the State of New Hampshire during the Period of the Revolution from 1776 to 1783* (Concord, N.H.: Edward A. Jenks, State Printer, 1874), Vol. 8, 485.

<sup>27</sup> Wright, “Rifle in the American Revolution,” 297-298.

<sup>28</sup> Thomas Jefferson, *Notes on the State of Virginia*, edited by William Peden (New York: W. W. Norton, 1982), 88.

readily discharge more than one shot. Only one gun found in this database of 3,249 probate inventories may have been a repeater: an “air gun” owned by Philippe Guillaume Chion [Philip Williamson?], Charleston merchant, who died in 1797.<sup>29</sup> However, as is noted below in paragraph 40, not all air guns available in America were repeaters.

**Table 1: Firearms in Probate Inventories of Male Decedents Filed between 1740-1800**

Region	Number of Sampled Male Inventories	Percentage of Inventories with Firearms	Percentage of Inventories with Muskets	Percentage of Inventories with Rifles	Percentage of Inventories with Pistols
New England 1740-1798	1057	46.1%	0.8%	0.0%	2.8%
New York and New Jersey 1740-1798	569	35.0%	1.9%	0.5%	5.8%
Pennsylvania 1740-1797	532	32.0%	0.2%	2.3%	5.1%
Maryland and Virginia 1740-1797	632	58.4%	1.3%	5.1%	9.0%
South Carolina 1740-1797	459	62.9%	3.7%	4.1%	23.3%
Totals	3249	46.6%*	1.4%*	2.0%*	7.8%*

**Note:** \*The percentages at the bottoms of the columns are not averages of the percentages in the columns, but percentages of the total of 3249 inventories found in each category: 1514 inventories with firearms, 45 inventories with muskets, 66 inventories with rifles and 254 inventories with pistols. **Sources:** The sources for the probate inventories used in this table are listed in Kevin M. Sweeney, “Firearms Ownership and Militias in Seventeenth- and Eighteenth-Century England and America” in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *A Right to Bear Arms? The Contested History in Contemporary Debates on the Second Amendment* (Washington, D.C.: Smithsonian Press, 2019), 70-71.

19. Partial militia returns from the state of Virginia dating from 1781 to 1784 provide additional evidence that American consumers preferred smoothbore firearms that were not muskets. Even though state law required “every militia-man to provide himself with arms [i.e. muskets] usual in regular service [i.e. the Continental Army] . . . this injunction was always in

<sup>29</sup> Inventory of Philippe Guillaume Choin, 1797, South Carolina Inventories and Appraisement Books, Vol. C, 1793-1800, 212-213. at Fold 3 by Ancestry <https://www.fold3.com/publication/700/south-carolina-estate-inventories-and-bills-of-sale-1732-1872>. <Accessed online 1/23/2023 at 6:00 P.M.>

differently complied with.”<sup>30</sup> Most did not own muskets, even in wartime. Only about 16.7% of the privately owned long arms were muskets, while another 20.3% were rifles owned by residents of the state’s western counties.<sup>31</sup> By contrast, 63.0% of the privately owned long arms were smoothbores that were not muskets.<sup>32</sup>

**Table 2: Partial Virginia Militia Returns Indicating Types of Arms in Use, 1781-1784**

Year	Number of Counties	Number of public muskets	Number of private muskets	Number of private long arms*	Number of private rifles	Number of private pistols	Total Number of Guns
1781	27	1502	1333	4225	1293	204	8557
1782	10	565	242	2113	767	60	3747
1784	15	541	441	1260	392	68	2702
ALL	52	2608	2016	7598	2452	332	15006

**Note:** \*Number of “private long arms” are privately owned long arms that were not muskets and not rifles.

**Sources:** Militia Returns 1777-1784, microfilm, Accession 36929; State Government Records Collection; “General Return of Arms, Accoutrements, and Military Stores, 19<sup>th</sup> May, 1784,” Accession 36912, House of Delegates, Executive Communications, Library of Virginia, Richmond

20. A large portion of the firearms used in eighteenth-century America would have been imported from England. At the time, most English firearms were fabricated by large-scale putting-out systems that obtained barrels from one set of suppliers, got gunlocks from other sources, and assembled the parts at yet another site where the firearms also would have been stocked by craftsmen who were woodworkers. By the mid-eighteenth-century, gun manufacturing in Birmingham, England involved “at least thirty different ‘sub-trades’ or manual

<sup>30</sup> Jefferson, *Notes on the State of Virginia*, 88.

<sup>31</sup> Calculated from data in Table 2.

<sup>32</sup> *Ibid.*.

manufacturing processes.”<sup>33</sup> In particular, this is how firearms were made for the British army and for the export trade to Africa and England’s colonies.<sup>34</sup>

21. Other than American long rifles and some New England fowlers, most eighteenth-century firearms used by colonists were not likely to have been custom made or “one-off” products. During the years from 1756 to 1763, at least 36,592 firearms were imported into the thirteen American colonies from England for civilian customers.<sup>35</sup> Another 18,900 trade guns were imported to sell to Native American customers.<sup>36</sup> Advertisements indicate that urban gunsmiths in the colonies sold imported firearms and made use of imported gunlocks and barrels. Most of the pistols sold in the colonies were not produced in the colonies.<sup>37</sup> A rare surviving account book of an inland gunsmith, John Partridge Bull of Deerfield, indicates that he made only three new guns over a period of 20 years from 1768 to 1788, while performing 452 repairs on existing firearms.<sup>38</sup> When it came to his gunsmithing business, this skilled craftsman may have had more in common with a twentieth-century TV repairman than he did with Samuel Colt or Eli Whitney.

## II. References to Repeating Arms in Eighteenth-Century Media

22. So, how common were repeating weapons in eighteenth-century America? The short answer is not very common; they were in fact extraordinarily rare. Information drawn from eighteenth-century advertisements and news reports found in *America’s Historical Newspapers*—a searchable database of 5,000 newspapers, with 450 dating from before 1800—tells much the same story.<sup>39</sup> This newspaper database was searched by entering the terms “gun,”

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<sup>33</sup> David Williams, *The Birmingham Gun Trade* (Stroud, Gloucestershire, Eng.: The History Press, 2009), 21.

<sup>34</sup> Williams, *Birmingham Gun Trade*, 21-24; De Witt Bailey, *Small Arms of the British Forces in America 1664-1815* (Woonsocket, R.I: Andrew Mowbrey, 2009), 93-102.

<sup>35</sup> Bailey, *Small Arms*, 237.

<sup>36</sup> De Witt Bailey, “The Wilson Gunmakers to Empire, 1730-1832” *American Society of Arms Collectors Bulletin* No. 85, 19.

<sup>37</sup> Jeff Kinard, *Pistols: An Illustrated History of Their Impact* (Santa Barbara: ABC-CLIO, 2003), 46.

<sup>38</sup> Susan McGowan, “Agreeable to his Genuis: John Partridge Bull (1731-1813), Deerfield, Massachusetts” (M.A. thesis, Trinity College, 1988), 5, 39-40, 74-75.

<sup>39</sup> *America’s Historical Newspapers* (Chester, VT: Readex, 2004).

“musket,” “fowler,” “rifle,” “pistol,” “shot” and “militia,” The search turned up 9 references to what appear to be repeating guns. To the information discovered by searching period newspapers can be added one more well-known instance of an unpublicized demonstration of a repeating firearm that took place in Philadelphia in April of 1777. This makes a total of 10 references to eighteenth-century repeaters in the period from 1720 to 1800.

23. What do these period references to repeating guns tell us about their features and how they were employed, how they were regarded, and why they remained relatively uncommon in eighteenth-century America? The earliest known reference in an American newspaper to a repeating firearm is reported in the *Boston News-Letter* of September 12, 1723: “Delegates from several Nations of Indians were Entertained with the sight of a Gun which has but one Barrel and one Lock,” but fired “Eleven Bullets successively in about Two Minutes” after being loaded only once. This firearm was made by John Pimm, a Boston gunsmith, who was active in the 1720s, but had died by 1730. This gun was not being offered for sale; no examples of a repeating long-arm by Pimm survive; it was a novelty. There is, however, a six-shot revolver with a flint ignition system made by John Pimm in the collection of the Cody Firearms Museum at the Buffalo Bill Center of the West.<sup>40</sup>

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<sup>40</sup> John Pimm’s 1715 revolver with a hand rotated cylinder and flint priming system bears an apparent resemblance to a modern Smith & Wesson .38 caliber revolver. Brown, *Firearms in Colonial America*, 255-256. Cut into the rotating cylinder were six chambers into which a small amount of gunpowder and a ball could be placed. The shooter rotated by hand the cylinder to align one of the chambers with both the barrel and firearm’s hammer which held a flint. The shooter then slid open the priming vent on the cylinder for the chamber aligned with the hammer and the barrel. He then pulled back the hammer by hand. Finally, pulling the trigger caused the hammer to strike the metal frizzen with the flint, creating a flash which entered the open vent on the cylinder and set off the powder in the chamber and discharged the ball. To fire again, the shooter again rotated by hand the cylinder to align a loaded chamber with the barrel and hammer and repeated the process outlined above. Pimm’s pistol could deliver six shots after being loaded once, but it was not a rapid-fire weapon, and it took time to reload the individual chambers with powder and ball.

Similar pistols and long arms with revolving cylinders moved by hand first appeared in Germany between 1490-1530. Brown, *Firearms in Colonial America*, 50. However, they remained rare in the American colonies, expensive, and suffered from mechanical problems because of the inability of gunsmiths to fit together the moving parts with enough precision to prevent loose powder from jamming the cylinder or producing an accidental discharge of the six chambers simultaneously. Brown, *Firearms in Colonial America*, 50-51; Graeme Rimer, et al., *Smithsonian Firearms: An Illustrated History*, (New York: D. K. Publishing 2014), 56. The revolver patented by Samuel Colt in 1836 and produced in his factory in Paterson, New Jersey



24. The next reference in an American newspaper to a repeating firearm is contained in an advertisement in the March 2, 1730 issue of Boston's *New-England Weekly Journal*. It was for a firearm employing an uncertain type of mechanism that made it possible to fire a succession of twenty projectiles "at once Loading." This advertisement also makes clear the novelty of such a repeating firearm. Samuel Miller, a Boston gunsmith, was charging Boston residents 9 pence each just to see the gun and 2 shillings—the equivalent of a day's wage of unskilled labor—to see it fired. Basically, this gun was being used in an eighteenth-century version of a sideshow. There is no indication that Miller was producing or selling such firearms.

25. However, in the *Boston Gazette* for April 12, 1756, gunsmith John Cookson advertised for sale a gun capable of firing 9 bullets in rapid succession. It was "A handy Gun of 9 and a half Weight; having a Place convenient to hold 9 Bullets, and Powder for 9 Charges and 9 Primings; the said Gun will fire 9 Times distinctly, as quick, or slow as you please, which one turn with Handle or the Said Gun, it doth charge the Gun with Powder and Bullet, and doth prime and shut the Pan, and cock the Gun." The advertisement provides a spot-on description of three repeating firearms found in the collections of the Milwaukee Public Museum, Royal Armouries Museum in Leeds, and the Victoria and Albert Museum in London that were all produced sometime around 1690 by John Cookson, an English gunsmith.<sup>41</sup> These were expensive and heavy firearms that weighed about 9 and a half pounds unloaded and over 10 pounds when loaded with 9 balls and powder charges.

26. Cookson's English repeater employed what was known as the Lorenzoni breech-loading system.<sup>42</sup> This system placed at the breech-end of the barrel a complex and delicate

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employed percussion caps in its priming system and remains the first practical revolver to enter production. The cylinder rotated when the gun was cocked and fired when the trigger was pulled. However, even sales of this mechanically successful firearm were insufficient to prevent the bankruptcy in 1843 of Colt's first gun manufactory. See Peterson, *Treasury of the Gun*, 211.

<sup>41</sup> Brown, *Firearms in Colonial America*, 144-146; David S. Weaver and Brian Goodwin, "John Cookson, gunmaker," *Arms & Armour*, Vol. 19 (June 2022), 43-63.

<sup>42</sup> Sometime around 1660 Michele Lorenzoni, a Florentine gunmaker, produced a repeating flintlock firearm that employed a lever system to feed into the breech powder and shot. His firearm drew upon earlier versions of this system developed by Giacomo Berselli, another Italian gunsmith, who had built upon earlier innovations by gunsmiths, Peter and Mathias Kaltoff. Brown, *Firearms in Colonial America*, 105-107, 144-145; Peterson, *Treasury of the Gun*, 229-231.



gunlock operated by a handle or lever attached to the left side of the lock. Separate tubes in the stock of the firearm were filled with priming powder, gunpowder for each charge, and 9 to 11 balls. The shooter pointed the gun barrel towards the ground and pushed the handle or lever down and forward, which rotated a mechanism located inside the gun lock that simultaneously brought forward one ball, enough gunpowder to discharge it, and enough primer to set off the charge in the barrel when the trigger was pulled. To recharge and again fire the gun, the shooter again pointed the barrel towards the ground, pushed on the lever and then pulled the trigger. If the parts of the gun lock did not fit tightly or if the shooter failed to lock it in the proper position when firing, flame might leak back and explode the black powder stored in the butt. Catastrophic failures happened because the period's methods of fabrication were not reliably capable of producing the fitting precision parts needed to prevent such malfunctions caused by errant sparks.

27. Sometime before 1701, John Cookson moved to Boston.<sup>43</sup> Despite Cookson's exceptional skill as a gunsmith, he apparently stopped making repeating firearms during his 60 years in Boston. There are no surviving eighteenth-century, American-made Cookson repeaters.<sup>44</sup> This is actually not surprising given the fact that American-made guns were typically "utilitarian in nature, certainly nothing like the fine magazine breech-loading repeaters normally associated with the name John Cookson."<sup>45</sup> The authors of a recent essay speculate that the 1756 newspaper advertisement "could have involved one of the repeaters which he had brought from England when he emigrated and which, at his age of 82 at the time, he had decided to sell."<sup>46</sup> The four known firearms that John Cookson did make in America are different types of single-shot firearms: one is a breech-loader, the others are muzzle-loading.<sup>47</sup>

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Today this type of repeating firearm is generally identified by English and American collectors and curators as employing the Lorenzoni system.

<sup>43</sup> Weaver and Godwin, "John Cookson, gunmaker," 51-56, 59-61

<sup>44</sup> *Ibid.*, 56, 60. Weaver and Godwin make clear that the firearm referred to as a "Volitional Cookson Repeating Flintlock" in the collection of the National Firearms Museum in Washington, D.C. was made in the late 1600s by John Shaw, a London gunsmith.

<sup>45</sup> *Ibid.*, 55.

<sup>46</sup> *Ibid.*, 60.

<sup>47</sup> *Ibid.*, 56-57.

28. The next appearance of an identifiable repeating firearm dates to April of 1777 and comes from the records and correspondence of the Continental Congress. Joseph Belton wrote to the Continental Congress claiming that he had a method “wherein a common small arm, may be maid [sic.] to discharge eight balls one after another, in eight, five or three seconds of time.”<sup>48</sup> He also claimed that such a gun could be made to discharge “sixteen or twenty, in sixteen, ten or five seconds.”<sup>49</sup> Its stated range was a mere 20 to 30 yards. On July 10, 1777, Belton demonstrated a firearm that successively discharged 16 bullets. He also claimed that this weapon could “do execution [at] 200 yards” which would have been a dramatic—and somewhat inexplicable—increase in the weapon’s supposed range of 20 to 30 yards.<sup>50</sup> In any event, Belton and Congress failed to agree on a financial arrangement. Belton requested the princely sum of £13,000—£1000 from each of the 13 states—to compensate him for inventing this system, though he subsequently reduced his demand to only £500 from each of the states.<sup>51</sup> There is no documentary or physical evidence indicating that Belton produced any of these firearms in 1777.

29. The specific design of the firearm that Belton demonstrated in 1777 remains unclear. There is a brass-barreled, flintlock fusil in the collection of the Smithsonian Institution that has been proposed as the actual gun or a prototype for the gun that Joseph Belton demonstrated in 1777.<sup>52</sup> It is engraved “IOS. BELTON INVENTOR ET ARTIFEX – PHILAL-

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<sup>48</sup> Quoted in Brown, *Firearms in Colonial American*, 317. This letter and others are reproduced in their entirety at Joseph Belton to the Continental Congress, April 1, 1777 at “Correspondence between John [sic.] Belton and the Continental Congress” at [https://en.wikisource/Correspondence\\_between\\_John\\_Belton\[sic.\]\\_and\\_the\\_Continental\\_Congress](https://en.wikisource/Correspondence_between_John_Belton[sic.]_and_the_Continental_Congress).

<sup>49</sup> *Ibid.*

<sup>50</sup> Letter with Enclosure, Joseph Belton to the Continental Congress, July 10, 1777, at “Correspondence between John [sic.] Belton and the Continental Congress” at [https://en.wikisource/Correspondence\\_between\\_John\\_Belton\[sic.\]\\_and\\_the\\_Continental\\_Congress](https://en.wikisource/Correspondence_between_John_Belton[sic.]_and_the_Continental_Congress).

<sup>51</sup> Joseph Belton to the Continental Congress, May 7, 1777 and Joseph Belton to John Hancock, May 8, 1777 at [https://en.wikisource/Correspondence\\_between\\_John\\_Belton\[sic.\]\\_and\\_the\\_Continental\\_Congress](https://en.wikisource/Correspondence_between_John_Belton[sic.]_and_the_Continental_Congress).

<sup>52</sup> Robert Held, “The Guns of Joseph Belton Part I” *American Rifleman* (March 1987), 36-39, 68-69; *Oregon Firearms Federation v. Brown*, U.S. Dist. Ct. Civ. No. 2:22-cv-01815-IM (lead case), Declaration of Ashley Hlebinsky (ECF 72) at 18, n 24.

MDCCLVIII [i.e. 1758]”. An additional engraving on the gun refers to “CAPT JOSEPH BELTON OF Philad.”<sup>53</sup> However, the Joseph Belton who arrived in Philadelphia in 1775 and who came into contact with Benjamin Franklin and subsequently other members of the Continental Congress and the Continental Army was a 1769 graduate of the College of Rhode Island, which is today Brown University.<sup>54</sup> In 1758, this Joseph Belton was not in Philadelphia; he was not a captain; and he was not then a gunsmith. Despite claims to the contrary, it is unlikely that this particular gun was demonstrated in Philadelphia in July of 1777.<sup>55</sup>

30. However as Harold Peterson suggested many years ago, it is quite likely that the firearm demonstrated in 1777 employed some version of what is known as a superimposition system.<sup>56</sup> In the simplest version of a superimposed or superposed system of loading a firearm, a series of alternating powder charges and balls are loaded directly into a gun’s barrel. There is no detachable or integral magazine, just a standard barrel that is loaded from the muzzle in an alternating sequence of gunpowder and balls. All of these charges were—ideally—set off in order from front to back by igniting the powder charge located behind the ball closest to the muzzle of the gun’s barrel. There is no magazine involved, and the ensuing discharge of balls is uncontrolled after it is initiated.

31. The superposed system for discharging a succession of balls had been tried as early as 1580 by a German gunsmith working in London.<sup>57</sup> Today, early flintlock pistols that used a simple superposed loading system are sometimes referred to as “Roman candle pistols” because they employed “the same principle as the firework” which involves setting off “a chain

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<sup>53</sup> Smithsonian National Firearms Collection, [https://americanhistory.si.edu/collections/search/object.nmah\\_440031](https://americanhistory.si.edu/collections/search/object.nmah_440031) Accessed 2/2/2013.

<sup>54</sup> Benjamin Franklin to Silas Deane, August 27, 1775 in *Papers of Benjamin Franklin*, Vol. 22, 183-185, especially footnote, 2.

<sup>55</sup> Quite distinct from the questions raised by what is known of Joseph Belton’s biography is the claim in Adam Weinstein “I am Tired of Being Tired” December 21, 2018 that his grandfather, Kenneth Weinstein, a gunsmith, fabricated this particular firearm. [adamweinstein.substack.com/p/i-am-tired-of-being-tired](http://adamweinstein.substack.com/p/i-am-tired-of-being-tired) <Accessed 2/2/2023 at 12:00PM>.

<sup>56</sup> Peterson, *Arms and Armor in Colonial America*, 218.

<sup>57</sup> Peterson, *Treasury of the Gun*, 195.

reaction of multiple discharges.”<sup>58</sup> Other writers also liken flintlock long arms that employed a simple superposed system of multiple charges to “Roman candles”.<sup>59</sup>

32. Later in London, Joseph Belton was involved in producing a sophisticated and controllable version of a firearm employing a superposed system. In 1784, Belton went to England where he failed to interest the English Ordnance Department in some version of his superposed system. By 1786, he had entered into a partnership with London gunsmith William Jover (active 1750-1810). Together they produced for Britain’s East India Company a smoothbore repeating firearm with a sliding gunlock, that moved down the barrel to ignite a succession of powder charges that propelled a series of musket balls contained in a replaceable metal magazine holding 7 projectiles. There are two authentic examples of this particular firearm in the collection of the Royal Armouries, National Firearms Center in Leeds, England.

33. Belton’s 1786 firearm allowed the shooter to control the weapon’s discharge and aim each shot, which was not possible with the simpler superposed system. As the 1786 firearm’s moving gunlock lined up with the next powder charge and ball, the shooter primed a pan, pulled back the cock on the sliding gunlock, and then pulled a trigger firing off a single projectile. Because of the need to cock and prime each time before pulling the trigger and firing the gun, this was not a rapid-fire repeating arm. This firearm was also something of a challenge to handle. It weighs 10 pounds unloaded and would have weighed close to 11 pounds when loaded. Jonathan Ferguson, the Keeper of Firearms and Artillery at the Leeds Firearms Center observes in an on-line video that managing the weapon is “a bit of a three-handed job.”<sup>60</sup>

34. A much cruder version of a firearm employing a superposed system was produced in America in the early 1790s. A July 20, 1793 newspaper report in *Philadelphia’s Gazette of the United States* from Elizabeth Town, Pennsylvania describes a firearm created by “the ingenious and

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<sup>58</sup> Jeff Kinard, *Pistols: An Illustrated History of their Impact* (Santa Barbara, CA: ABC-CLIO, 2004), 37.

<sup>59</sup> Brown, *Firearms in Colonial America*, 100; Peterson, *Treasury of the Gun*, 197.

<sup>60</sup> Jonathan Ferguson, “Flintlock Repeating – 1786” youtube.com/watch?v=wOmUM40G2U. <Accessed online 11/6/2022 at 4:00 P.M>

philosophic Mr. Chambers of Mercersburg in Pennsylvania.” This was Joseph Gaston Chambers (1756-1829). According to the news report, this pistol “discharged six balls in succession, with only one loading and once drawing the trigger, exclusive of the reserve shot, which went off with the drawing of another trigger.” Later in the year, Chambers attempted to interest the United States War Department in buying long arms employing his version of the superposed system.

35. A drawing that was probably done later reveals that Chambers’s superposed system for a musket employed two gunlocks: one near the front of the barrel and the other in the usual location at the barrel’s breech. First a powder charge was poured down the barrel followed by a traditional spherical ball which was pushed down to the breech. This was the reserve shot. Next a succession of 8 special, cylindrically shaped bullets with conical tails and 8 powder charges were pushed down the barrel. Pulling a cord triggered the lock near the front of the barrel and ignited the first powder charge closest to the muzzle, which fired the first cylindrical projectile. A hole in the next projectile carried the charge through it and down its conical tail, which ignited the charge, which propelled the second cylindrical charge, and so on. Finally, the spherical ball resting at the barrel’s breech was discharged by pulling the second trigger near the breech.<sup>61</sup> Chamber’s system did not employ a detachable magazine, and once initiated, the gun’s discharge could not be controlled. A drawing of this firearm is attached as **Exhibit B**.

36. Chambers’s initial efforts to win government interest in 1793 and a patent for his invention were unsuccessful. A demonstration in May of 1793 failed to impress the War Department. Later in 1813, Chambers did secure a patent and supplied the U.S. Navy with 200 repeating muskets and 100 repeating pistols and also sold weapons to the state of Pennsylvania.<sup>62</sup> The Navy’s use of these weapons attracted the attention of the British and Dutch governments. However, in the end, Chambers’s system with its unusual projectiles failed to obtain sustained interest from any government. His guns did work, but they could also produce devastating malfunctions. As historian Andrew Fagal has pointed out, cramming the gun’s barrel with

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<sup>61</sup> For the best description of the system and an illustration of how the gun was loaded see Fagal, “The Promise of American Repeating Weapons, 1791-1821” pages 2-3 of 6.

<sup>62</sup> Peterson, *Treasury of the Gun*, 197.

projectiles and gunpowder produced what was potentially a pipe bomb.<sup>63</sup> All superposed weapons were difficult to load correctly, and if the bullets did not fit tightly, flame could leak around them and set off all the charges at once.<sup>64</sup> In the 1820s, the “complexity and inherent dangers” of superposed systems that filled gun barrels with multiple charges of explosive gun powder “led to their wholesale abandonment.”<sup>65</sup>

37. A safer alternative to the systems employed by Cookson and Chambers was an air gun that did not use black powder as a propellant. There are two advertisements—one for a demonstration and one for an auction—that contained references to an air gun able to fire 20 times with a single charging. The February 10, 1792, issue of New York City’s *Daily Advertiser* announced “To the Curious” daily exhibitions of an air gun. This gun was supposedly made by a young man who was a native of Rhode Island, though in an advertisement almost two years later, it was claimed that the gun was made in New York City by “An American Artist.” This gun discharged twenty times without needing to renew the propellant provided by compressed air. Each pull of the trigger provided enough air to send a ball through an inch-thick board at a distance of sixty yards. For 6 pence, a resident of the city could see Gardiner Baker demonstrate the air gun twice a day—Tuesday and Friday afternoons excepted—at his museum located at no. 13 Maiden Lane. There is no indication that Gardiner Baker, “the young man in Rhode Island” or the “American Artist” in New York was marketing air guns. Instead, once again a repeater was being featured as a novelty in a show put on for paying customers.

38. The air gun demonstrated by Baker appears to have resembled or possibly might have been an actual example of a European air rifle designed by Bartholomeo Girardoni in 1779. A Girardoni air gun had a magazine with a capacity of 22 balls, each of which was propelled by discharges of compressed air from a replaceable cannister carried in the gun’s stock. The gun

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<sup>63</sup> Fagal, “The Promise of American Repeating Weapons, 1791-1821,” page 4 of 6.

<sup>64</sup> Peterson, *Treasury of the Gun*, 198.

<sup>65</sup> Andrew J. B. Fagal, “The Promise of American Repeating Weapons, 1791-1821” page 2 of 6. <Accessed online 10/25/2022 at 4:55 P.M> Fagal is currently an assistant editor of the Papers of Thomas Jefferson at Princeton University.

weighed about 10 pounds—which was about the same as a musket—but was shorter, being only four feet in length overall. As contemporaries in Europe reported, these air guns were not without their problems: “Due to their construction, these guns were much more difficult to use effectively than normal, as one had to handle them much more cautiously and carefully.”<sup>66</sup> In the late 1700s, the Austrian Army, which had a peacetime establishment of 304,628 men, purchased 1,500 Girardoni air rifles that, theoretically, could have armed only 0.5% of its soldiers.<sup>67</sup> As it turned out, “after a while no more than one-third of them were in a usable state,” and they were all phased out by 1810 if not before.<sup>68</sup>

39. The American military’s use of a Girardoni air rifle was more limited in number and briefer in its timespan, but is also much better known. On their 1804-1806 expedition to the Pacific Ocean and back, Lewis and Clark and their “Corps of Discovery” carried with them a single Girardoni air rifle.<sup>69</sup> While it was occasionally used for hunting, their air rifle was primarily employed to impress Natives that they encountered along the way. As Private Joseph Whitehouse recorded in his journal: “Captain Lewis took his Air Gun and shot her off, and by the Interpreter, told them that there was medicine in her, and that she could do very great execution.” “They all stood amazed at this curiosity.”<sup>70</sup> Eight decades after John Pimm’s repeating firearm had been used to impress Native Americans in Boston, Lewis and Clark—like the showman Philadelphia Gardiner Baker—were still able to exploit the rarity of a repeating gun to awe and entertain.

40. It is possible that someone in the United States may have been marketing Girardoni air rifles or something very similar to them in the mid-1790s. An announcement for a public

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<sup>66</sup> Quoted in Frederick J. Chiaventone, “The Girardoni Air Rifle: The Lewis and Clark Expedition’s Secret Weapon” *Military Heritage* Vol. 14 No. 5 (January 2015), 19.

<sup>67</sup> Richard Bassett, *For God and Kaiser: The Imperial Austrian Army* (New Haven: Yale University Press, 2015), 186.

<sup>68</sup> Chiaventone, “Girardoni Air Rifle,” 19.

<sup>69</sup> For the identification of the air rifle on the Lewis and Clark Expedition as a Girardoni see Madeline Hiltz, “The Lewis and Clark Air Rifle: A Blast from the Past” *War History on Line* (June 16, 2021) <https://warhistoryonline.com/war-articles/lewis-and-clark-air-rifle.html?firefox=1> <Accessed online 1/21/2023, 8:00AM>

<sup>70</sup> Chiaventone, “Girardoni Air Rifle,” 66.



auction in the issue of the Boston *Columbian Centinel* for March 7, 1795 listed among the items to be sold “a Magazine Air-Gun, equipped for hunting, and will carry ball or shot.” This air gun appears to be a repeating gun because of its reference to a “Magazine.” However, one should not automatically assume that all early air guns were repeaters. Air rifles made by Isaiah Lukens (1779-1846) of Pennsylvania were single shot air guns, though some writers erroneously assume that they were repeaters like Girardoni’s air rifle.<sup>71</sup> It wasn’t until the 1880s that two Michigan companies—the most famous of which was the Daisy Manufacturing Company—would begin marketing the first commercially successful, mass-produced repeating air rifles, aiming them at a youth market, employing a lever-action operating system, and shooting BB-caliber pellets.

41. Two more references to what appear to be repeating firearms were discovered in eighteenth-century newspapers. One from the August 19, 1793 issue of the Concord, New Hampshire *Mirror* contains a vague report of a repeating weapon supposedly designed by an “Artist in Virginia”. However, this particular news report has been dismissed as a fabrication.<sup>72</sup> The other reference to what does appear to be an identifiable type of repeating firearm was contained in a large advertisement in the October 26, 1785 issue of the *Columbian Herald* in Charleston, South Carolina. It was placed by James Lambet Ransier, a native of Liege, which was a center of small arms manufacturing in the Low Countries. Ransier announced that he had “a beautiful and complete assortment of Firearms” and in particular, he could furnish guns “that will fire four different times, with only charging once; or, if the person pleases, he may fire four different times one after another, with only one single lock.”

42. Ransier appears to be describing imported Belgian or French-made Segales pistols which had four rifled barrels. These were small pistols that had a box lock and a swiveling

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<sup>71</sup> Nancy McClure, “Treasures from Our West: Lukens Air Rifle” August 3, 2014, Buffalo Bill Center of the West. <Accessed online on 10/31/2022, at 10:40 A.M> On November 2, 2022, I received an email from Danny Michael, Curator of the Cody Firearms Museum at the Buffalo Bill Center of the West, confirming that their Lukens air rifle is a single shot weapon.

<sup>72</sup> Many aspects of the news report in the *Mirror* raise fundamental questions about its believability, as does the fact that it was immediately followed by a news report on a Sea Monster. An intensive search of Virginia newspapers in *America’s Historical Newspapers* failed to uncover the supposed origin of the news report. Because it could not be confirmed and because of its lack of detail and credibility, the report was dismissed.



breech attached to a cluster of four separate barrels: two upper barrels placed on top of two lower barrels. The box lock had two triggers and two hammers holding two flints, while the swiveling or rotating breech had four frizzens that were attached to the barrels. Each barrel was loaded separately at the muzzle with powder and ball. The two upper barrels could be fired one at a time by pulling each of the individual triggers in succession or fired simultaneously by pulling both triggers at once (which could be risky). After discharging the two upper barrels, the shooter then swiveled the rotating breech and the cluster of four barrels by pulling on the pistol's trigger guard. Once rotated to the upper position, the two barrels formerly in the lower position could now be fired when the triggers were pulled individually or simultaneously. However, as experts have pointed out: "All revolvers, and other multibarrel guns, of the muzzle-loading type were at risk from a dangerous chain reaction, in which firing one chamber could accidentally set off all the others."<sup>73</sup> If this happened, the gun would explode in the shooter's hand.

43. Finally, something needs to be said about a gun which—ironically—was never found in the 13 Colonies, but has assumed an out-sized importance in the minds of some writing about colonial Americans and their presumed interest in and familiarity with repeating firearms.<sup>74</sup> In the early 1700s, James Puckle, an English lawyer, writer, and part-time inventor created a firearm fed by a 11-shot magazine located at the back of the gun that was rotated by a crank. Rotating the crank aligned a power charge and bullet in the magazine with the weapon's barrel. After locking the magazine and the barrel together, the operator had to manually prime each shot and pull back the cock before pulling the trigger for each discharge of the weapon. Because of the time needed to prime and cock the hammer before each shot and to change the magazine after it was emptied, the gun had a rate of fire of only 9 rounds per minute. It was

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<sup>73</sup> Rimer, *Smithsonian's Firearms*, 56.

<sup>74</sup> Clayton E. Cramer and Joseph Edward Olson, "Pistols, Crime, and Public Safety in Early America" *Willamette Law Review* Vol. 44, No. 4 (Summer 2008), 716-717; David B. Kopel, "The History of Firearm Magazines and Magazine Prohibitions" *Albany Law Review* Vol. 78, No. 2 (2014-2015), 852.

never used in battle. The company producing it went out of business before 1730. This gun had no discernable impact on colonial Americans nor on the development of firearms technology.<sup>75</sup>

44. However, the Puckle gun lives on in the imaginations of some.<sup>76</sup> Because of its weight, the Puckle gun used a tripod. Visually the weapon bears an undeniable physical resemblance to certain .30 caliber machine guns used in World War II. As a result, some refer to it today as “an eighteenth-century machine gun.” It was not a machine gun as we understand and use the term today, in either its mode of operation or its rate of fire. The machine gun, invented by Hiram Maxim in 1884, used the recoil action of the gun to load it continuously and discharge spent cartridges. Just pull the trigger and it kept firing bullets as long as the operator’s assistant kept feeding it an ammo belt. Another less common version of the machine gun diverted some of the gasses produced by discharging the weapon into a tube with a piston that automatically and repeatedly loaded the gun and ejected spent cartridges. (A modern assault rifle uses a similar system that also employs diverted gasses to operate a piston.) The .30 caliber medium machine gun used by the American army during World War II fired approximately 500 rounds a minute. The only thing this weapon had in common with the eighteenth-century Puckle Gun was its use of a tripod.

45. In summary, period probate inventories and newspapers indicate that repeating firearms were extraordinarily rare in eighteenth-century America. Like muskets, repeaters were regarded as military firearms. In 1777, the Continental Congress demonstrated an interest in Joseph Belton’s firearm, and in 1813 the United States Navy purchased 200 muskets and 100 pistols produced by Joseph Gaston Chambers. However, such superposed systems were in the assessment of military historian Joseph G. Bilby “a developmental dead end.”<sup>77</sup> Well into the third-quarter of the nineteenth century, the American government armed the overwhelming

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<sup>75</sup> Brown, *Firearms in Colonial America*, 239. Brown appears to misstate the capacity of the magazine as 9-shot, when it was actually a 11-shot magazine.

<sup>76</sup> See note 74 above.

<sup>77</sup> Joseph G. Bilby, *A Revolution in Arms: History of the First Repeating Rifles* (Yardly, Penn.: Westholme Publishing, 2015), 41.

majority of its soldiers with muzzle-loading single-shot long arms. Even during the Civil War, the Union army made only limited use of the much more reliable repeating long arms made by Samuel Colt, the Spencer Arms Company, and the New Haven Arms Company, which was owned by Oliver Winchester and produced a repeater designed by Benjamin Henry.<sup>78</sup>

46. The earlier lack of enthusiasm for repeating firearms among eighteenth-century Americans is unsurprising given the colonists' demonstrated preferences for inexpensive, light firearms that used less gunpowder and lead than did muskets. By contrast, most of the period's repeating arms were expensive, heavy, and required greater expenditures—that were often uncontrollable—of gunpowder and lead. Because repeating firearms contained multiple charges of explosive black powder gunpowder, they were also more dangerous than a gun using a smaller charge of gunpowder and a single projectile. Some of these repeating firearms had the potential to turn into a Roman candle or a pipe bomb. As Harold Peterson has observed “As long as the powder and ball had to be loaded separately there was no hope for a simple and safe magazine repeater.”<sup>79</sup> For these reasons, eighteenth-century advertisements and homes were filled with muzzle-loading, single shot firearms.

47. The fact that some repeating firearms had been produced in Europe for four centuries by 1800 does not necessarily support the conclusion that Americans in the late 1700s would have assumed that such weapons would inevitably become reliable, safe, and widely available. An individual looking back from 1800 might have been just as likely to conclude that very little progress had been made over the previous four centuries. It was still not possible to manufacture with precision and in any quantity firearms with closely fitting parts that could contain the destructive explosive potential associated with the use of black powder gunpowder. The superposed systems employed by Belton and Chambers, the Girardoni air rifle, and the Puckle Gun proved to be dead ends. Calling these weapons and others like them “eighteenth-century assault rifles” or “an eighteenth-century machine gun” are examples of modern-day

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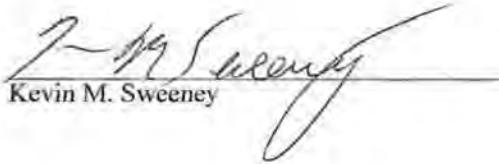
<sup>78</sup> Bilby, *Revolution in Arms*, 44-48, 60-91.

<sup>79</sup> Peterson, *Treasury of the Gun*, 233.

rhetoric, not evidence of inevitable developments in firearms technology. As George Basalla, an historian of technology, has cautioned: “All too often it is assumed that the development of technology is rigidly unilinear.”<sup>80</sup>

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 5 day of February, 2023.

  
Kevin M. Sweeney

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<sup>80</sup> George Basalla, *The Evolution of Technology* (New York: Cambridge University Press, 1988), 189.

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2000-2016 Professor of History and American Studies, Amherst College.  
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1989-1993 Assistant Professor of History and American Studies, Amherst College.  
1986-1989 Director of Academic Programs, Historic Deerfield, Deerfield, Mass.  
1985-1986 Assistant Professor, Winterthur Museum, Winterthur, Delaware.  
1980-1984 Administrator-Curator, Webb-Deane-Stevens Museum, Wethersfield, Conn.  
1978-1980 History Instructor, Westover School, Middlebury, Conn.

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2007 Visiting Faculty, American Studies Seminar, American Antiquarian Society, Worcester, Mass.  
1987-1989 Assistant Professor of American Studies at Smith College under the Five College Program.  
1985-1986 Adjunct Assistant Professor, Early American Culture, University of Delaware.  
1982-1984 Visiting Lecturer in American Studies, Trinity College, Hartford, Conn..  
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**Declarations Filed as an Expert Witness:**

2022 *Hanson v. District of Columbia*, Case No. 1:22-cv-02256-RC.  
2023 *Delaware State Sportsmen's Assoc., Inc. v. Delaware Dept. of Safety and Homeland Security*, United States District Court, District of Delaware, Case No. 1:22-cv-00951-RGA.

**Academic Honors and Prizes:**

2003 Book Prize, New England Historical Association.  
2003 Award of Merit, American Association for State and Local History.

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- 1995 Harold L. Peterson Award, Eastern National Parks & Monuments Association.
- 1986 Jamestown Prize of the Institute of Early American History and Culture, Williamsburg, VA.
- 1986 Frederick W. Beinecke Prize in History, Yale University.
- 1973 Mary Cady Tew Prize in History, Yale University.
- 1972 William Bradford Turner Prize in American History, Williams College.
- 1971 Phi Beta Kappa, Williams College.

#### **Publications:**

##### **Books**

With Evan Haefeli, co-editors, *Captive Histories: English, French and Native Narratives of the 1704 Deerfield Raid* (Amherst, Mass.: University of Massachusetts Press, 2006).

With Evan Haefeli, *Captors and Captives: The 1704 French and Indian Raid on Deerfield* (Amherst, Mass.: University of Massachusetts Press, 2003). Awarded 2003 Book Prize, New England Historical Association and 2003 Award of Merit, American Association for State and Local History.

##### **Articles/Book Chapters/Catalogue Essays**

“Revolutionary State Militias in the Backcountry and Along the Frontiers,” *The American Revolution on the Frontier*, edited by Seanegan Sculley, Sons of the American Revolution 2022 Conference Proceedings, (publication forthcoming).

“Firearms Ownership and Militias in Seventeenth- and Eighteenth-Century England and America” in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, editors *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment* (Washington, D.C.: Smithsonian Scholarly Press, 2019), 54-71.

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With Evan Haefeli, "Wattanummon's World: Personal and Tribal Identity in the Algonquian Diaspora, c. 1660-1712" in William Cowan, ed., *Papers of the Twenty Fifth Algonquian Conference* (Ottawa, 1994), 212-224.

"High Style Vernacular: Lifestyles of the Colonial Elite " in *Of Consuming Interests: The Style of Life in Eighteenth-Century America*, edited by Ronald Hoffman, Cary Carson, and Peter J. Albert (Charlottesville: University of Virginia Press, 1994),1-58. Volume awarded the Harold Hugo Memorial Book Prize, Old Sturbridge Village, 1995.

"Meetinghouses, Town Houses, and Churches: Changing Perceptions of Sacred and Secular Space in Southern New England, 1725-1850" *Winterthur Portfolio* 28:1 (Winter 1994):59-93.

"Using Tax Lists to Detect Biases in Probate Inventories," *Early American Probate Inventories: Dublin Seminar for New England Folklife Annual Proceedings 1987*, Peter Benes, ed. (Boston: Boston University Press, 1989), 32-40.

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"Furniture and the Domestic Environment in Wethersfield, Connecticut, 1640-1800," *Connecticut Antiquarian* 36:2 (1984): 10-39. Revised and reprinted in *Material Life in America, 1600-1860*, Robert B. St. George, editor (Boston: Northeastern University Press, 1988), 261-290.

"From Wilderness to Arcadian Vale: Material Life in the Connecticut River Valley, 1635 to 1760" and "Gravestones" in *The Great River: Art and Society of The Connecticut Valley, 1635-1820* (Wadsworth Atheneum, Hartford, CT., 1985), 17-27, 485-523. Volume awarded the Harold Hugo Memorial Book Prize, Old Sturbridge Village, 1985.

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"Mansion People: Class, Kinship and Architecture in Western Massachusetts in the Mid-18th Century," *Winterthur Portfolio* (Winter 1984):231-255.

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**Exhibitions:**

- 2007-2008 Consultant, "Shays's Rebellion," N. E. H. Funded Web-Exhibition, Springfield Technical Community College and Pocumtuck Valley Memorial Association.
- 2003-2005 Consultant and Contributor, "The Many Stories of 1704," N.E.H. Funded Web-exhibition, Pocumtuck Valley Memorial Association. 2005 Museums and Webs Award Winner; 2005 Award of Merit, American Association for State and Local History; 2007 Merlot History Classics Award and others.
- 1984-1985 Consultant and Contributor, "The Great River: Art and Society of the Connecticut Valley, - 1820" Catalogue awarded Charles F. Montgomery Prize for 1985 by the Decorative Arts Society; Award of Merit from the American Association for State and Local History, 1986; Honorable Mention, E. Harold Hugo Memorial Book Prize, Old Sturbridge Village, 1986.
- 1982 Consultant and Contributor, "Two Towns: Concord and Wethersfield - A Comparative Exhibition of Regional Culture, 1635-1850," 1982. N. E. H. Funded Exhibition.

**Films/Videos:**

- 2012 Contributor, *Cherry Cottage, The Story of an American House*, Dave Simonds, Williamstown, Mass.
- 2009 Contributor, *The Forgotten War: The Battle for the North Country*, Mountain Lake Public Television, Plattsburg, NY.
- 2005 Contributor, *Captive: The Story of Esther*, VisionTV and Aboriginal Peoples Television Network, Canada.
- 2003 Contributor, *New England's Great River: Discovering the Connecticut*, Vermont Public Television, Burlington, VT

**Memberships in Professional and Scholarly Societies:**

American Historical Association.  
Colonial Society of Massachusetts.  
Massachusetts Historical Society.  
Organization of American Historians.  
Society of Military Historians

**Ex. A - Sweeney Decl.**

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Ex. 4\_Echeverria Decl.

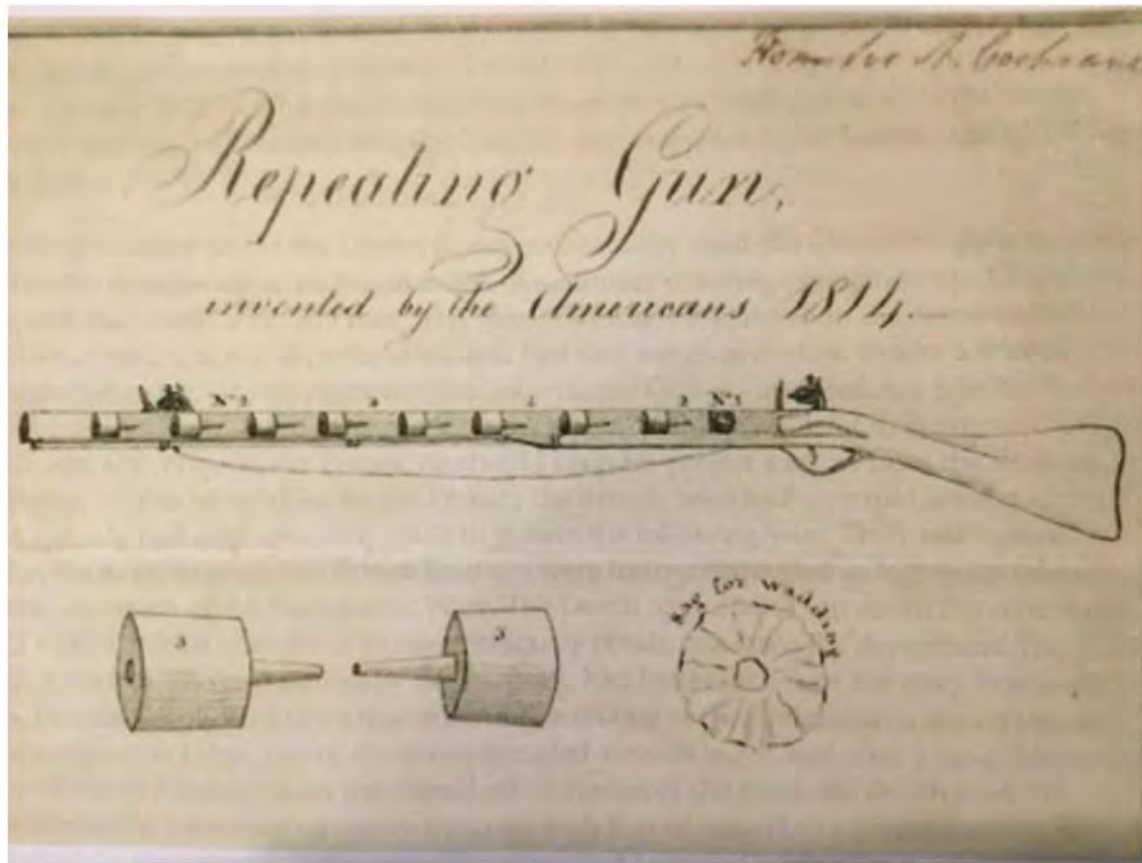
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### **Other Professional Activities**

2008-2010 Chair, History Department, Amherst College.  
2005-2007 Chair, American Studies Department, Amherst College.  
2003-2004 Consultant, "Remembering 1704: Context and Commemoration of the Deerfield Raid"  
Pocumtuck Valley Memorial Association and Historic Deerfield, Inc.  
1997-2001 Consultant, "Turns of the Centuries" Project, Pocumtuck Valley Memorial Association.  
1997-1999 Chair, History Department, Amherst College.  
1997-1998 Consultant, Exhibition entitled "Performing Arts: The Refinement of Rural New England,"  
Historic Deerfield., Inc.  
1996-1998 Member, Advisory Committee for the Dickinson Homestead, Amherst College.  
1994-1995 Chair, Committee on Priorities and Resources, Amherst College.  
1993-1995 Chair, American Studies Department, Amherst College  
1992 Consultant, "Forty Acres: A Reinterpretation Initiative," Porter-Phelps-Huntington  
Foundation, Hadley, Mass.  
1991 Consultant, "Furniture-making in Central New England, 1790-1850," Old Sturbridge  
Village.  
1991-1994 Member, Five College Standing Committee on American Indian Studies.  
1986-1989 Member, Five College American Studies Steering Committee.  
1981-1986 Member, Advisory Committee for Historic Deerfield.

1/27/2023



## **EXHIBIT 21**



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THE CALIFORNIA REPORT

# Gun Groups: More Than A Million High-Capacity Magazines Flooded California During Weeklong Ban Suspension

By [Matthew Green](#)  Apr 12, 2019

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*This article is more than 4 years old.*



A Colt AR-15 with a high-capacity magazine that holds more than 30 rounds. (Thomas Cooper/Getty Images)

More than a million high-capacity ammunition magazines flooded into California during a one-week window created when a federal judge temporarily threw out the state's ban, gun owners' groups estimated Thursday.

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**SFMTA's Jeffrey Tumlin | CA Gun Violence**

The magazines aren't tracked. But there are plenty of anecdotal indications that the floodgates briefly opened when U.S. District Judge Roger Benitez overturned the state's nearly 20-year-old ban in late March.

Gun control advocates, however, said the projections are inflated and self-serving as gun rights organizations try to make the case that high-capacity magazines bans are impractical.

The judge halted sales a week later, but ruled that those who bought the magazines can legally own them while the state appeals his ruling.

"Everything was all sold out. I basically took whatever I could get," said Chris Puehse, who owns Foothill Ammo in Shingle Springs, east of Sacramento.

He fielded dozens of telephone calls while buyers stacked up 20 deep in his one-man store to buy the hundreds of magazines that arrived in two shipments last week. He had just six left by the time Benitez reinstated the ban last Friday.

"People loved it. It was like we were out of prison and were not treated like bastard stepchildren of the country anymore," he said.

Puehse said that 30-round magazines for military-style rifles, handgun magazines holding 17 to 20 bullets, all selling for less than \$30 each, almost immediately "disappeared."

"They wanted to grab more than I let them, otherwise they would have been gone even

faster than a few hours," he said. "Because of that one slip-up, in one week you literally had millions of magazines come into the state that were bought legally. These magazines are here to stay."

Hours before Benitez again halted sales, California Attorney General Xavier Becerra warned that the state was in danger of becoming "the wild, wild West for high-capacity magazines."

"There are those who are now trying to flood the state of California with what were until this decision illegal high-capacity magazines, the type of magazines that are used in firearms to commit the mass shootings that we've seen throughout the country," Becerra said.

The magazines allow shooters to fire more bullets without stopping to reload. Gun owners' organizations — and Judge Benitez — said that's helpful to ward off multiple home invaders, but opponents said it gives victims less time to escape or tackle a mass shooter as he reloads.

During that short window, a number of ammunition manufacturers around the country sought to take advantage of the opportunity. South Carolina-based Palmetto State Armory announced in a Facebook ad that it was "prepared to send a whole lot of freedom to our friends in California," but warned of delays due to high demand.

"The pipeline was open and it was flowing, on all platforms — people showing up (in stores), online — I'm guessing that UPS and FedEx had a field day," said Gun Owners of California president Sam Paredes. "It was a frenzy."

He said an estimate of a million magazines "seems a little bit low."

California's more than 2.5 million gun owners together have nearly 20 million guns, many of which can use the extended magazines.

Staff attorneys with the Giffords Law Center to Prevent Gun Violence in San Francisco said they've seen no evidence to back up the million-magazine estimate, and said gun rights organizations have a vested interest in inflating the number of law-abiding owners.

"They have a very specific purpose and intent here to try to set up for the court that these are devices that are very commonly used and possessed" and therefore should not be banned again, said Ari Freilich, an attorney with the center.

The problem isn't the new owners who will use them legally for target shooting or self-

defense, he said, it's that some will fall into the hands of criminals or be used by mass shooters.

Reformers expect the 9th U.S. Circuit Court of Appeals to keep the ban on sales while reinstating a 2016 state law and ballot measure banning possession even by those who purchased the magazines legally.

Opponents of California's law are counting on the U.S. Supreme Court to ultimately side with Benitez's ruling, that the bans infringe on the Second Amendment right to bear arms.

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